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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

CHARLES T. DOUDS, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, AND LOCALS 856, 824, 874, 895, 920, 975 AND 1258, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, WILLIAM P. LYNCH, SECRETARY-TREASURER OF LOCAL 791, HAROLD BOWERS, SECRETARY OF LOCAL 824; AND WILLIAM ACKALITIS, BUSINESS AGENT OF LOCAL 874

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on June 24, 1955, reversing the judgment of the District Court for the Southern District of New York, imposing fines and prison sentences upon respondent unions and three of their officers for criminal contempt in violation of an order of the District Court entered on March 4, 1954, in a proceeding under Section 10 (l) of the National Labor Relations Act, as amended.

OPINION BELOW

The opinion of the court below (App. A, *infra*, pp. 26–36) is not officially reported.

JURISDICTION

The judgment of the court below was entered on June 24, 1955 (App. A, *infra*, p. 37). Petitioner's petition for rehearing was denied on July 22, 1955 (App. A, *infra*, p. 38). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Respondent unions, in retaliation against a rival union in the course of a struggle over the representation of employees for collective bargaining purposes, directed the employees of employers doing business with carriers whose trucks were driven by members of a union affiliated with the rival union, to cease performing services in connection with those trucks. The primary question is whether such concerted refusal to perform services constitutes a violation of Section 8 (b) (4) (A) in view of the fact that the respondents' ultimate objective was to gain representation rights, and the cessation of business between the carriers and their employer customers was an incidental and intermediate object.

2. Whether a restraining order, couched in the language of the statute, which respondents were alleged, and found by the district court, to have contumaciously disobeyed, should be read, as the court below held, solely by reference to the order

itself, or in the light of the pleadings, issues and showing made before the issuing court, in order to determine whether it was directed against the conduct giving rise to the contempt proceedings.

STATUTE INVOLVED

The principal statutory provision involved is Section 8 (b) (4) (A) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, 158 (b) (4) (A)) which, together with Section 10 (l) of the Act, is set forth in Appendix B, *infra,* pp. 39–40.

STATEMENT

I. THE EVENTS LEADING TO THE ISSUANCE OF THE TEMPORARY RESTRAINING ORDER BY THE DISTRICT COURT

In September 1953, the International Longshoremen's Association (herein called ILA), which for years had been affiliated with the American Federation of Labor (herein called AFL), was expelled from the AFL. A new organization was immediately chartered by AFL to compete with ILA for the representation of longshoremen (I–213, II–1253;[1] see *United States* v. *Inter-*

[1] The record consists of the printed appendix to respondents' (appellants below) brief in the court below, the typewritten transcript of testimony and exhibits introduced in evidence. Roman numerals followed by arabic numerals are references to the volume and pages, respectively, of the typewritten transcript of testimony; references to the respondents' printed appendix are designated "A. A." and exhibits put in evidence by petitioner and respondents are designated, respectively, "Pet. Ex." and "Resp. Ex."

national Longshoremen's Association, 116 F. Supp. 262, 264 (S. D. N. Y.)). The new organization, designated American Federation of Labor-International Longshoremen's Association (herein called AFL-ILA), immediately commenced organizational activities, and many members of the old ILA, and in some instances entire locals, transferred their affiliation to the new AFL-ILA (I–842, III–32, 33). On October 1, 1953, respondent ILA and its affiliated locals struck the East Coast, including the Port of New York, partly because of an impasse with employers over contract terms and partly to offset the ILA-AFL's challenge to its representative status (III–22, 24). On October 5, the Attorney General of the United States, pursuant to the national emergency provisions of Section 208 of the Act, secured an 80-day injunction against the strike (III–24–25). The strike terminated with the issuance of the injunction (III–25–26).

On October 8, 1953, AFL-ILA filed a petition with the National Labor Relations Board for certification as the exclusive bargaining representative of the longshoremen employed in the Port of New York (III–131–132). On December 23 and 24, 1953, the Board conducted an election to determine whether the old ILA or the new AFL-ILA, or neither, was the majority representative of these employees (Pet. Ex. 41). The election did not result in the certification of a representative because objections to the election were filed by the

AFL-ILA, alleging, *inter alia*, that there had been violence and intimidation in connection with the polling in Brooklyn (III–152–154).[2] Hearing on these objections was ordered by the Board and was in progress (III–152) when the following events occurred.

William McMahon, a longshoreman who for many years worked on Pier 32, North River, for Moore-McCormack Lines, Inc. (herein called Moore-Mac), was among those who switched to AFL-ILA in October 1953 (I–100–101, 102). Prior thereto he had been a shop steward of ILA Local 895 (I–100, 101). Because of McMahon's transfer to AFL-ILA, ILA struck Pier 32 and Moore-Mac thereupon terminated McMahon's employment (I–102–103). About 4 months later, however, on February 23, 1954, AFL-ILA prevailed upon Moore-Mac to rehire McMahon to work on Pier 32 (I–105–106). On learning of this that same afternoon, ILA again struck Pier 32 and its members employed there remained away from work on February 24 and 25 while McMahon worked (I–106–107). On February 25, Moore-Mac again discharged McMahon at the request of ILA and the latter's members returned to work (I–108–113). On February 26, 1954, McMahon commenced picketing Pier 32, and as a result AFL truck drivers, principally members

[2] The Board subsequently, on April 1, 1954, found merit to the objections, set the election aside, and ordered a new election (Pet. Ex. 43).

of Local 807, International Brotherhood of Teamsters, Chauffeurs and Warehousemen of America, AFL (herein called Teamsters Local 807), refused to cross McMahon's picket line to make deliveries or pick-ups (I–114).[3]

In retaliation against the AFL for the Pier 32 picketing and the refusal of truck drivers to cross the picket line, ILA, on the same day, February 26, 1954, instructed its members employed throughout the Port of New York to refuse to load or unload any trucks driven by members of Teamsters Local 807 (III–54–57). There was general compliance with these instructions and the result was a paralysis of commerce in the Port affecting employers wholly unconnected with the dispute at Pier 32 (I–223). On February 27, 1954, the New York Shipping Association[4] filed a charge with the Board alleging that ILA, by its instructions to its members to refuse to load and unload trucks driven by members of Teamsters Local 807, was violating Section 8 (b) (4) (A) of the National Labor Relations

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[3] Teamsters Local 807 is the largest of the Teamsters locals in the Port of New York area and its members do most of the hauling to and from the piers (III–56).

[4] The New York Shipping Association, whose members employ most of the longshoremen in the Port of New York, is an employer group of approximately 170 companies which operate steamship lines, stevedoring companies, warehouses and related enterprises involving the transportation of cargo and passengers into and out of the Port of New York.

Act, as amended. The charge was later amended to include eight of ILA's local unions as respondents.

Although requested to do so, ILA refused to withdraw its aforesaid instructions or to discontinue its "boycott" of trucks driven by Teamsters Local 807 drivers (V–1587). Accordingly, on March 4, 1954, petitioner, pursuant to Section 10 (l) of the Act (29 U. S. C. 160 (l)), filed with the United States District Court for the Southern District of New York a verified petition (together with supporting exhibits and affidavits setting forth with particularity ILA's refusal to serve Local 807 trucks) alleging, in sum, that there was reasonable cause to believe that respondents' conduct was in violation of Section 8 (b) (4) (A) of the Act and praying for the issuance of a temporary restraining order pending a hearing on the petition for an injunction against said conduct (A. A. 14–20). Thereupon, on March 4, 1954, the district court (A. A. 20–22), finding that on the petition, exhibits and affidavits before it, there was "reasonable cause to believe" that ILA and eight locals had violated Section 8 (b) (4) (A) of the Act, issued, as prayed in the petition, a temporary restraining order restraining them and all persons acting in concert with them, from:

> Engaging in, or, by orders, directions, instructions, appeals, or other means, or by permitting any such to remain in exist-

ence or effect, inducing or encouraging the employees of members of New York Shipping Association and of other employers to engage in, strikes or concerted refusals in the course of their employment, to use, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform services for their employers, where objects thereof are (1) to force or require members of New York Shipping Association and other employers to cease doing business with trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and (2) to force or require customers of trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, to cease doing business with said trucking concerns; * * *

II. THE CONTEMPT PROCEEDINGS AND CONVICTIONS

The restraining order was issued on the afternoon of March 4, 1954, in the presence of counsel for ILA (A. A. 23). That same afternoon, the official printer of ILA (II–1122) printed and delivered picket placards bearing ILA's official insignia and the legend: "ILA-Independent Members Being Discriminated Against" (Pet. Ex. 1, II–1130). That evening, the longshoremen employed at Pier 88, North River, in the juris-

diction of respondents ILA Local 824 and Bowers, walked off the job in protest against the issuance of the temporary restraining order (VI–2436–2437, 2463–2464, 2510). The following morning, Friday, March 5, 1954, the longshoremen represented by ILA and its local unions at other docks also joined in the strike (I–235, III–89, 90, 215, 217, 322–323, V–1515) in protest against the issuance of the temporary restraining order (IV–377–378, 783, 1069), and pickets appeared at the docks in Manhattan and Brooklyn carrying the above picket signs (I–246, 839, 877, 957, II–1288, VII–2880–2881, Pet. Ex. 24, 50). By Monday, March 8, 1954, most of the Port was shut down, with ILA members and agents picketing at the docks and other installations in the Port (I–246, 249, 250, 251, 252, 664, 668, 671–674, 819, 925–926, 943, III–237). On or about March 24, 1954, ILA publicly announced "official" adoption of the strike (III–69) which allegedly had theretofore been engaged in contrary to its instructions. The strike continued thereafter until April 3, 1954, and ended promptly when Captain Bradley, president of ILA, ordered the longshoremen to return to work (V–1573). Even then, ILA did not terminate the strike in order to comply with the court's restraining order, but because the Board's decision which set aside the December election indicated that a continuation of the strike might bar ILA from a place on the ballot in the new elec-

tion ordered by the Board (Pet. Ex. 43). Thus, the strike, which paralyzed commerce in the Port of New York, lasted for a period of 29 days, 25 of which were after the petition to adjudicate respondents in contempt was filed in the district court (I–789, V–1570).[5]

On March 9, 1954, petitioner filed a petition in the district court alleging that the strike and picketing constituted civil and criminal contempt of the restraining order by ILA, eight of its local unions and three officers of the locals (A. A. 27–34). Upon respondents' application, the district court ordered the civil and the criminal contempt cases tried together, with only the criminal contempt charges to be submitted for the jury's consideration.

At the trial respondents contended that the strike was the spontaneous action of their members which respondents neither authorized nor condoned, and which they sought to avoid and to terminate, but without success. Respondents further contended that the objects of the strike which commenced on March 4 and 5 were to secure a contract from the New York Shipping Association

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[5] As a result of the strike at the Port of New York, ships were directed to the ports of Boston, Philadelphia and Baltimore. There, ILA longshoremen refused to unload these vessels. Charges were filed with the Board alleging that such conduct violated Section 8 (b) (4) (A). The refusal to unload these vessels ceased after injunctive proceedings were instituted on behalf of the Board, pursuant to Section 10 (l), in the appropriate district courts.

and to obtain certification by the Board, objects different from those proscribed by the temporary restraining order. Respondents also denied knowledge of the terms of the restraining order. These contentions were submitted by the trial judge to the jury with appropriate instructions (A. A. 38–39, 69–70). The trial judge (A. A. 46) instructed the jury, *inter alia,* that if the general strike which followed the issuance of the temporary restraining order "was merely a subterfuge, which announced a new and legal purpose to lend color of legality to the real underlying purpose of the strike, if in reality it sought to carry on and accomplish the same illegal purpose of the secondary boycott of 807 trucks by indirection, which the Court order had enjoined, then it was an illegal strike." The jury returned a verdict of guilty as to each respondent. The trial judge thereupon imposed fines upon the nine unions totalling $92,500 and imposed jail sentences of 3 to 6 months on the individual respondents (A. A. 3–13). Respondents appealed to the court below from the orders imposing prison sentences and fines.[6]

III. THE DECISION OF THE COURT BELOW

The court below (*infra,* pp. 26–36), Judge Swan dissenting, reversed the district court's judg-

[6] One of the respondents named in the proceedings in the district court, Local 791, did not file timely notice of appeal to the court below.

ments convicting respondents for criminal contempt. Assuming, in accordance with the jury's finding, that the general strike which followed issuance of the restraining order was "a subterfuge to cover the refusal [to serve trucks driven by Local 807 members]" (*infra,* p. 31), the court below nonetheless ruled that the refusal itself was not violative of Section 8 (b) (4) (A) of the Act. The court noted that respondents' "refusal to serve the trucks was a reprisal and retaliation against the '807' drivers," and more fundamentally, therefore, a "step * * * in the contest for control of the Port," and concluded that because of this circumstance respondents' conduct lacked the prerequisites of a "secondary boycott" which it assumed to be the purpose of Section 8 (b) (4) (A) to outlaw (*infra,* pp. 31–32). In explanation, the court below observed that a " 'secondary boycott' in the usual meaning of that term," presupposes a strike against a neutral employer to force discontinuance of relations with a different employer who is involved in a labor dispute, thereby "putting pressure on the [latter] to come to terms with his own employees" (*infra,* p. 32). The court below acknowledged that "Section 8 (b) (4) (A) does indeed go further than that," for, as shown by cases in which this Court has upheld findings of violations, it also encompasses strikes where the purpose was not simply to "help * * * the em-

ployees of another employer in a dispute between them and him," but with the "'object' * * * to promote the general solidarity of unionism" (*infra*, p. 32).[7] As the court viewed this case, however, respondents' conduct was not calculated either to assist other employees or the cause "of unionism in general" (*infra*, p. 33); rather, the refusal to serve trucks driven by members of Local 807 was to *"advance* [*respondents'*] *own cause in a dispute with another to gain representation"* (*infra*, pp. 32–33).

The question then, as the court below viewed it, was whether respondents' refusal to serve trucks driven by Local 807 members and the consequent disruption of business relations between members of the Association and carriers employing members of Local 807, neither of whom was involved in disputes with its respective employees, fell within the coverage of Section 8 (b) (4) (A), where the underlying or ultimate object of the refusal was the advancement of respondents' own interests in "the contest for control." The court answered the question in the negative in spite of the fact that, as the court conceded, a cessation of business between employer-members of the Association and carriers

[7] *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, 341 U. S. 675; *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 341 U. S. 694; *Local 74, United Brotherhood of Carpenters* v. *National Labor Relations Board*, 341 U. S. 707.

employing members of Local 807 "was one of the probable, nay inevitable, consequences of the refusal" (*infra*, p. 33). As explained by the court, the "object" of strikes or refusals to perform services which is prohibited by Section 8 (b) (4) (A) refers to (*infra*, pp. 33–34):

> * * * the concluding state of things that the actor seeks to bring about: that which satisfies his aim. Hence it is a term relative to the whole sequence of steps that he proposes; and it does not apply to those that are only intermediate to it.

The court concluded that since respondents' refusal to perform services in connection with Local 807 trucks "appears inevitably" to have been "part of the struggle for control of the Port, that was the only 'object' in the sense that that term is used in the section" (*infra*, pp. 34, 35, 36); accordingly, in the court's view, respondents' conduct was not shown to have been for the object proscribed by the Act.[8]

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[8] In reaching its decision the court below noted that there was a further question of whether, "even though the 'object' of [respondents'] refusal had been to break up the business of the 'Association' or the 'customers' with the trucking companies," there would be a violation of Section 8 (b) (4) (A). For here, unlike the situation in the usual case involving Section 8 (b) (4) (A) which has come before the courts, "the cessation of business between third parties is brought about without the mediation of one of the parties affected" (*infra*, p. 35). Finding that it was unnecessary to pass on this question, the court expressly left it "undetermined" (*ibid.*). Cf. *National Labor Relations Board* v. *Washington-Oregon Shingle Weavers' District Council*, 211 F. 2d 149 (C. A. 9).

The court below also ruled that the adjudication of contempt could not be upheld on the ground that respondents had disobeyed the restraining order, which, as the court observed, they were not entitled to do regardless of whether the order "was right or wrong". Finding that the restraining order "followed the language phrase" of Section 8 (b) (4) (A), the court concluded that this "left open what meaning the [district] court ascribed to the words that had been lifted without change from the section," and that accordingly "we must assume that no more was forbidden than the section itself forbade" (*infra*, pp. 35–36).

REASONS FOR GRANTING THE WRIT

1. The decision of the court below turns on the meaning it attributes to the critical term "object" as used in the statutory prohibition against strikes or refusals to handle goods or perform services "where an *object* thereof is * * * forcing or requiring any employer * * * to cease doing business with any other persons" (italics added). Thus, the court assumes that there would have been a violation of the Act if respondents' "refusal to serve the trucks was merely to cause a cessation of business between the 'Association' and the trucking companies, or between those companies and their customers" (*infra*, p. 34), but holds that no violation was committed because such cessation of business,

though "known and intended", was "only intermediate" to respondents' ultimate object of winning representation rights (*infra*, p. 34). According to the court, the statutory term "object" applies only to the latter—the final objective, as distinct from the intermediate, though incidental objectives, which union conduct is intended to achieve.

The interpretation thus given Section 8 (b) (4) (A) constitutes, we think, an erroneous and significant departure from the decisions of this Court, other courts of appeals, and the Board. In *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, 341 U. S. 675, this Court, in reversing the judgment of the court of appeals, specifically rejected the court of appeals' reading of Section 8 (b) (4) (A), now advanced by the court below, that where the ultimate "purpose of the [union] was to render the particular job all union," a strike at the job site to protest the presence of nonunion employees of a subcontractor was not for the "object * * * in any literal sense to require [the general contractor of the job] to cease doing business with [the nonunion subcontractor]." 186 F. 2d 326, 335 (C. A. D. C.). For, as stated by this Court, it was enough to establish a violation that "in order to attain its ultimate purpose [the union], must have included among its objects that of forcing [the general contractor] to terminate that subcontract." 341 U. S. at 688. And,

as this Court added, Section 8 (b) (4) (A) does not require a finding "that the *sole* object of the strike" is the cessation of business between employers. *Id.*, at 689. See also, 93 Cong. Rec. 6859. Similarly, it has uniformly been held by the courts of appeals that a violation of Section 8 (b) (4) (A) is established where a union, in support of its ultimate objective of prevailing in a labor dispute with an employer, induces employees of other employers to strike their employer, with the calculated "intermediate" objective of causing a cessation of business between the latter employer and the employer involved in the dispute. See, e. g., *National Labor Relations Board* v. *Denver Building and Construction Trades Council,* 219 F. 2d 870 (C. A. 10); *Piezonki* v. *National Labor Relations Board,* 219 F. 2d 879 (C. A. 4); *National Labor Relations Board* v. *Teamsters Local No. 135,* 212 F. 2d 216 (C. A. 7); *National Labor Relations Board* v. *United Brotherhood of Carpenters,* 184 F. 2d 60 (C. A. 10), certiorari denied, 341 U. S. 947; *National Labor Relations Board* v. *Wine, Liquor & Distillery Workers Union,* 178 F. 2d 584 (C. A. 2). Cf. *National Labor Relations Board* v. *Washington-Oregon Shingle Weavers' District Council,* 211 F. 2d 149 (C. A. 9).

The attempt of the court below to distinguish *National Labor Relations Board* v. *Denver Building and Construction Trades Council* and its com-

panion cases is unavailing. The asserted difference in the object of the strikes in the two cases—the promotion of general "union solidarity" in the *Denver* case and the advancement of the union's own cause in the instant case—overlooks the fact, recognized in this Court's opinion in the *Denver* case, that the striking labor organization there had as its ultimate object control over all construction jobs, a purpose which, like that in this case, worked primarily to its own benefit. Moreover, in both *International Brotherhood of Electrical Workers* v. *National Labor Relations Board,* 341 U. S. 694, and *Local 74, United Brotherhood of Carpenters* v. *National Labor Relations Board,* 341 U. S. 707, decided at the same time as the *Denver* case, the unions found to have violated Section 8 (b) (4) (A) plainly had the object of advancing their own interests in having their members awarded the jobs in question.[9] These cases make clear that a purpose of serving one's own cause affords no immunity from Section 8 (b) (4) (A) so long as the foreseeable consequence or "an object" of the prohibited conduct, whether ultimate or im-

[9] Although the employees who were induced to walk off the job in the *Electrical Workers* case may have done so in order to assist members of a different craft or to promote the solidarity of unionism, their "object" is not controlling; rather, whether Section 8 (b) (4) (A) is violated turns on the object of persons charged with its violation—in the *Electrical Workers* case, the union which induced carpenters to walk out.

mediate, is the cessation of business between employers.

The legislative history of Section 8 (b) (4) (A) confirms this view. The Report on the Senate bill, from which the present Section is derived, states that this provision was intended, *inter alia,* to prohibit the kind of activity which, as described in testimony before the Senate Committee, Local 3, IBEW had carried on in the New York City area. S. Rep. No. 105, 80th Cong., 1st Sess., p. 22. Thus, as pointed out in the Senate Report (*ibid.*), in its effort to increase the number of jobs available to its members and improve their working conditions, Local 3 had followed the practice of refusing to install electrical products of manufacturers whose employees were not members of that union. See *Allen Bradley Co.* v. *Local 3, IBEW,* 325 U. S. 797, 799–800. The fact that Local 3 plainly had as its ultimate object the self-benefiting purpose of improving the economic conditions of its members, and, indeed, the fact that there was no active labor dispute between Local 3 and any of the nonunion manufacturers in no way detracted from Congress' expressed determination to prohibit such refusal to perform services where the foreseeable result, albeit an intermediate objective, was the cessation of business between the two groups of employers. After all, the basic Congressional purpose in enacting Section 8 (b) (4) (A) was to guard

against the conscription of employers into labor disputes which did not concern them, whatever ultimate objective the union may seek to advance. To achieve this objective Congress banned all strike action directed against, or which has the effect of injuring, the business of third persons not involved in the basic disagreement giving rise to the conflict. 93 Cong. Rec. 3835, 4198. The Act "broadly sweeps within its prohibition an entire pattern of industrial warfare deemed by Congress to be harmful to the public interest." *Printing Specialties, etc. Union* v. *LeBaron,* 171 F. 2d 331, 334 (C. A. 9). By interpreting Section 8 (b) (4) (A) to immunize secondary pressure on neutral employers wherever a union can establish that its ultimate purpose is the advancement of its own cause, the decision below goes far in thwarting the Congressional objective and removing from the scope of an important provision of the Act an extensive area of conduct which Congress intended to forbid.

2. The decision below, if it stands, undoubtedly will have an important impact upon the administration of Section 8 (b) (4) (A) and the related provision of the Act, Section 10 (l),[10]

[10] Section 10 (l) provides in substance (*infra*, pp. 39–40) that whenever, upon charges alleging, *inter alia*, violations of Section 8 (b) (4) (A), the officer or regional attorney of the Board investigating the charges has reasonable cause to believe that the charges are meritorious, he shall, on behalf of the Board, petition the appropriate district court for injunctive relief pending the final adjudication of the Board with respect to such matter.

generally, and particularly in the district courts within the jurisdiction of the court below where injunction proceedings under Section 10 (l) are instituted. In this connection, it should be noted that, for example, during the fiscal year ending in June 1955, approximately 300 charges were filed with the Board alleging violations of Section 8 (b) (4) (A). Approximately 60 of these charges were deemed by the investigating officer to have merit so as to require invocation of the mandatory provisions of Section 10 (l) for interlocutory injunctive relief in the district courts. Approximately one-third of these cases originated, and proceedings for injunctive relief were brought in the district courts, within the jurisdiction of the court below. It would seem apparent from the foregoing that the decision below will play a significant role in future litigation under Sections 8 (b) (4) and 10 (l) of the Act, particularly in the district courts in the Second Circuit.

The importance of the decision below is further emphasized by the practical aspects of litigation under Section 8 (b) (4) (A) and Section 10 (l). Experience demonstrates that frequently the denial of injunctive relief under Section 10 (l) marks the end of the unfair labor practice proceedings generally. In such instances, the employers are often inclined to yield to such "secondary" pressures, "make their peace" with the

union, and request the Board to permit withdrawal of the charges initiating the proceedings. Although the Board need not permit withdrawal of the charges, nevertheless the consequence often is that the proceedings are, for all practical purposes, ended and the vindication of an important national policy effectively thwarted. The decision below, which in the Board's view may seriously restrict what Congress deemed to be perhaps the most significant amendment to the Act, can only serve to intensify this situation.

Finally, it may be noted that the rivalries which gave rise to the instant proceedings still persist. Respondent International and its affiliate locals represent substantially all of the dock workers on the Atlantic and Gulf Coasts and on the Great Lakes. A recurrence of retaliatory strike action against the ILA-AFL in these various localities would create the danger of a paralyzing effect upon the national economy. It is important, in the Board's view, to determine whether such strike activity, having serious adverse consequences, is a type of conduct against which the Nation can guard through Section 8 (b) (4) (A) and Section 10 (l).[11]

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[11] Waterfront disputes, of which the instant case is one, have been a perennial source of strife of such importance to the national economy as repeatedly to call for state and federal action. Thus, for example, in 1950 a strike called by the ILA on the Great Lakes prompted the President to

3. The second question presented tests the applicability to this case of the settled rule, recognized by the court below, that the district court's restraining order "had to be obeyed, whether it was right or wrong" (*infra*, p. 35).[12] If the order encompassed respondents' refusal to service trucks driven by members of Local 807, there is no question but that the contempt adjudication should be upheld, for the jury found that respondents continued their refusal after issuance of the order.

In reading the district court's order to be coextensive in its coverage with the statutory language it paraphrased, the decision of the court below again reflects a serious departure from settled law. For, as this Court has stated, "The nature and extent" of an injunction is to be

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declare a national emergency and to appoint a Board of Inquiry. Ex. Orders 10138 and 10139. In 1954 a longshoremen's strike in the New York Port led the State of New York to appoint a Board of Inquiry to investigate the strike. In October 1953, as a result of a strike on the East Coast called by the ILA, the President declared a national emergency and the Federal Government obtained an 80-day injunction against the strike (see *supra*, p. 4). In 1951 the Governor of the State of New York appointed a crime commission to investigate employment conditions of longshoremen in the Port of New York. As a result of the findings of this commission, New York and New Jersey entered into a compact, subsequently approved by Congress, regulating employment of longshoremen in the Port. See *Linehan* v. *Waterfront Commission*, 347 U. S. 439.

[12] See *United States* v. *United Mine Workers*, 330 U. S. 258, 293; *Maggio* v. *Zeitz*, 333 U. S. 56, 69.

determined "upon an examination of the issues made and intended to be submitted and what the decree was really designed to accomplish." *Vicksburg* v. *Henson,* 231 U. S. 259, 273. See also *Oklahoma* v. *Texas,* 256 U. S. 70, 88, 272 U. S. 21, 42–43; *National Labor Relations Board* v. *Edward G. Budd Mfg. Co.,* 169 F. 2d 571, 575 (C. A. 6); *Larkin Packer Co.* v. *Hinderliter Tool Co.,* 60 F. 2d 491, 494 (C. A. 10). Only by failing to apply this settled principle could the court below avoid the conclusion that the restraining order encompassed the conduct upon which the contempt conviction was based. For the pleadings, the issues and the showing made before the district court at the time it signed the restraining order, and indeed, as the court below apparently conceded (*infra,* p. 30), the understanding of the parties at that time, clearly indicate that the order was directed specifically at respondents' refusal to service trucks driven by Local 807 members (See A. A. 14–22, and affidavits attached to original Petition for Injunction).

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

SIMON E. SOBELOFF,
Solicitor General.
THEOPHIL C. KAMMHOLZ,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
SAMUEL ROSS,
DUANE BEESON,
Attorneys,
National Labor Relations Board.

AUGUST 1955.

APPENDIX A

United States Court of Appeals for the Second Circuit

No. 292. October Term, 1954

Argued May 12, 1955. Decided June 24, 1955

Docket No. 23491

CHARLES T. DOUDS, REGIONAL DIRECTOR, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL., RESPONDENTS

Before HAND, SWAN and FRANK, *Circuit Judges*

On appeal from an order of the District Court for the Southern District of New York (Burke, J., presiding), imposing a sentence of imprisonment and fine upon the respondents in a criminal proceeding to punish them for disobedience of an order of the District Court, entered in a proceeding under § 10 (l) of the Labor-Management Relations Act.[1]

HAND, *Circuit Judge.*

This is an appeal by the respondents—three individuals, the "International Longshoremen's Association, Independent," and eight of its

[1] § 160 (l) of Title 29, U. S. Code.

"Locals"—from an order of Judge Burke, imposing prison sentences and fines as punishment for contempt of an order of the District Court for the Southern District of New York, issued on March 4, 1954, in a proceeding brought by the petitioner, Douds, as Regional Director of the National Labor Relations Board under § 10 (l) of the Labor-Management Relations Act.[1] We quote in the margin the relevant parts of the order.[2] The contempt proceeding was begun by

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[1] § 160 (l) of Title 29, U. S. Code.

[2] Now, therefore, upon the above, it is ordered that respondents International Longshoremen's Association, Independent, and Locals 791, 856, 824, 874, 895, 920, 975 and 1258, International Longshoremen's Association, Independent, and each of them, their agents, servants, employees, attorneys and all other persons in active concert or participation with them, be and they hereby are enjoined and restrained until March 9, 1954, at 5:00 p. m., and not longer, without further order of this Court, from:

"Engaging in, or, by orders, directions, instructions, appeals, or other means, or by permitting any such to remain in existence or effect, inducing or encouraging the employees of members of New York Shipping Association and of other employers to engage in, strikes or concerted refusals in the course of their employment, to use, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform services for their employers, where objects thereof are (1) to force or require members of New York Shipping Association and other employers to cease doing business with trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and (2) to force or require customers of trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, to cease doing business with said trucking concerns; * * *"

an order to show cause, upon the return of which the respondents filed answers; and the issues so arising were tried to a jury, which returned a verdict against the respondents, on which the court imposed the sentences in question. We shall speak of the respondent, "International Longshoremen's Association, Independent," as the "Independent;" of "Local 807," a truck drivers' affiliate of the "American Federation of Labor," as "807;" of the New York Shipping Association as the "Association;" and the "American Federation of Labor" as "AFL."

In 1953 the "Association" was a combination of about 170 employers in the Port of New York who operated steamships, stevedoring companies, warehouses and the like. The "Independent," a longshoremen's labor union, had been preceded by an earlier union of the same name which was an affiliate of "AFL," and consisted of a group of "locals," comprising substantially all the longshoremen in the Port. For reasons not here relevant, in the fall of that year "AFL" expelled this affiliate, and chartered in its stead another longshoremen's union, which was an affiliate, which we shall speak of as "AFL–ILA," and which at once began to try to draw members away from the "Independent" in the hope of getting itself certified as the representative of all the longshoremen in the Port. On October 1 the "Independent," not being able to come to any agreement with the "Association," called a longshoremen's strike, which the district court enjoined for 80 days under § 208 of the Labor-Management Relations Act upon the motion of the Attorney General. In obedience to that order

the "Independent" went back to work; but "AFL–ILA," believing that it had secured the adherence of a majority of the longshoremen, filed a petition with the Labor Board for certification as their representative. An election was held on December 23 and 24, at which the "Independent" got a majority; but the Board refused to grant it a certificate because of the methods that "AFL–ILA" alleged it to have employed. While the Board was conducting hearings on these objections, the district court on March 4, 1954 granted ex parte the injunction, whose disobedience was the subject of the prosecution now at bar.

The occasion for that injunction was as follows. One, McMahon, a longshoreman, had been a member and "shop steward" of one of the locals of the original International Longshoremen's Association; but he had resigned, had joined "AFL-ILA," and had been employed on Pier 32 by the Moore-MacCormack Line. The longshoremen at that pier who were members of the "Independent" refused to work with McMahon and struck. He was then discharged and the striking members went back to work. However, McMahon picketed the pier, wearing a tabard with the customary legend; and the drivers of most of the trucks that fetched shippers' goods to and from Pier 32, who were members of "807," refused to cross McMahon's picket line, in protest against his discharge. Thereupon the "Independent" refused to serve any trucks driven by members of "807," at any of the piers in the Port, which resulted in an almost complete tie-up. This situation induced the petitioner to bring the proceeding here

in question; the first step in which was the ex parte injunction, disobedience of which is the subject of this appeal. After the order was obtained the longshoremen belonging to the "Independent" went on a general strike all over the Port.

Nearly all the respondents deny that they knew of the terms of the order, which forbade, not only the conduct described, but allowing it to continue after the order had been entered; but we shall assume, arguendo, that there was enough evidence to support a finding, not only that they did learn of it, but that they either actually counselled or directed the men to continue to refuse to serve the trucks, and eventually to strike against the "Association." Although there is nothing in the record to show that the "Association" had any contract with the trucking companies, or that the shippers of goods to and from the piers did not deal directly with them, it is common ground that the "Association" was "doing business" with the companies, and that the shippers were their "customers." Again, there is no evidence that the "Association" under compulsion of the "Independent" broke off any business that it was doing with the trucking companies, or that the shippers did the same. Indeed, it does not appear that there were no other than "807" drivers available to carry goods to the piers; but it is to be assumed that there were not as many available as were necessary, so that the "Independent's" refusal to serve the "807" drivers as we have said effected a substantial tie-up of the Port, before the strike which occurred after the ex parte injunction had been granted.

The evidence is that the refusal to serve the trucks was a reprisal and retaliation against the "807" drivers for their refusal to cross McMahon's picket line; but obviously, both the drivers' refusal at Pier 32 and the longshoremen's refusal to serve the trucks at all the piers were steps in the contest for control of the Port, because it will be remembered that "807" was an affiliate of "AFL," like "AFL-ILA."

The judge told the jury that the refusal to serve the trucks, taken independently of the strike, was unlawful, if its "object was to force the employers of the men working on the piers to cease doing business with trucking concerns employing 807 drivers"; or if it had the "object" of forcing "customers of the trucking concerns employing 807 drivers to cease doing business" with them. In that case they should convict; but if on the other hand they found that the strike was not a subterfuge to cover the refusal, they should acquit. We are therefore to assume that the jury found that the strike was a "subterfuge"; and that they had acted upon the ruling that the refusal to serve the trucks was of itself a disobedience of the order. We shall for the moment assume that whatever was a violation of § 8 (b) (4) (A), was disobedience of the order and address ourselves to whether the refusal was such a violation. It was not, we think, within the three most recent decisions of the Supreme Court construing the section.[3]

[3] *National Labor Relations Board* v. *International Rice Milling Co.*, 341 U. S. 665. *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, 341 U. S. 675. *International Brotherhood of Electrical Work-*

In the first place it was *not a "secondary boycott" in the usual meaning of that term; for that presupposes a labor dispute between the employees of one employer, with whom another employer has business relations, as a customer, or as the source of his material, or the like.* It further presupposes that the employees of the second employer, wishing to make common cause with those of the first, strike, or threaten to strike, against their own employer, unless he will discontinue his relations with the first, by this means putting pressure on the first to come to terms with his own employees. Section 8 (b) (4) (A) does indeed go further than that; for in the three decisions that we have cited, the employees were not helping the employees of another employer in a dispute between them and him. Nor had they any dispute with their own employer as to the conditions of work or bargaining representative. On the contrary, their only "object" was to promote the general solidarity of unionism by refusing to work with non-union men, even though these were in a different craft from theirs. In the case at bar it is true that the "807" drivers were in a different craft from the longshoremen; but the "object" of the "Independent's" refusal to serve their trucks was not to advance the union solidarity, but a move against "807" for taking part in the dispute between itself and "AFL-ILA." If this was within the statute *it means that a union may not advance its own cause in a dispute with another*

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ers v. *National Labor Relations Board*, 341 U. S. 694. *Local 74* v. *National Labor Relations Board*, 341 U. S. 707.

to gain representation, if the step it takes causes a cessation of business between its employer and a third person, or between two third persons. It is one thing to say that such interference is unlawful when its "object" is the promotion of unionism in general, and a very different thing to forbid such a sanction as part of the contest for control. We start therefore with the premise that, if the section goes so far, it ought to appear very plainly in the text, and we do not think that it does.

Turning then to the text, we are to ask whether it was an "object" of the "Independent's" refusal to serve the trucks to force the "Association" "to cease doing business with the trucking concerns" or to force "customers" of "the trucking concerns" to "cease doing business" with them. It is indeed true that this was one of the probable, nay perhaps inevitable, consequences of the refusal; but the liability imposed by the section is much more limited than the usual liability for a tort, which extends to any damage that the tortfeasor should reasonably have expected to result from his act. All strikes and "concerted refusals" to work involve some cessation of business; that is the only sanction they can have. When Congress limited the wrong to occasions when the cessation was an "object" of the conduct, it excluded much indeed that the ordinary law of tort would have included. If it had not done so, it would have made nearly all strikes unlawful. The "object" of an action is the concluding state of things that the actor seeks to bring about: that which satisfies his aim. Hence it is a term relative to the whole sequence

of steps that he proposes; and it does not apply to those that are only intermediate to it. If I wish to enter my house, but can do so only by passing through my garden, my "object" is to enter the house, and it is not a subsidiary "object" to pass through the garden. On the other hand, if I find the garden gate locked, and I take out my key, the "object" of my doing so is to open the gate, though it is still only a step towards entering the house. So in the case at bar, if the respondents' refusal to serve the trucks was merely to cause a cessation of business between the "Association" and the trucking companies or between those companies and their customers, that may have been within the section, though not even that is perfectly certain as will appear. On the other hand, if the refusal was a part of the struggle for control of the Port, that was the only "object" in the sense that that term is used in the section, unless it is to cover all acts in a labor dispute that are known and intended to result in a cessation of business between others. When therefore the judge left no question to the jury, except whether the strike was a subterfuge for continuing the refusal, it necessarily followed, regardless of whether the refusal was a step or move in the contest for power, that it was within the section. With that we do not agree for the reasons we have given. It was not within the section unless it affirmatively appeared that the refusal was not part of the struggle; and that did not appear from the fact that it was an act of reprisal. Reprisals are a customary part of all sorts of warfare. Indeed, not only might it be a move in the con-

test; but it almost inevitably was one, for the "Independent" had no dispute with the trucking companies, or for that matter with the "Association" itself.

We have just said that it is not perfectly certain, even though the "object" of the refusal had been to break up the business of the "Association" or the "customers" with the trucking companies, that the plaintiff would have proved his case. It so happens that in all the three cited decisions the union forced its employer to put a subcontractor off the job; it did not merely refuse to assist the work of the nonunion men. We do not say that it should make a difference whether the cessation of business between third parties is brought about without the meditation of one of the parties affected; but we do wish to leave that question undetermined, and that we may for the reasons we have tried to state.

The only remaining question is whether if the respondents' conduct was not a violation of the section, it necessarily follows that it was not in disobedience of the order, because we of course agree that the order had to be obeyed, whether it was right or wrong. In the statement of the "objects" that made the conduct unlawful the order followed the language phrase of subsection A: that is, the ban was upon forcing an employer "to cease doing business with any other person." It only substituted the names of the "Association," the trucking companies and their "customers"—presumably the shippers. We do not forget the recital that there was "reasonable cause to believe" that the respondents had violated the section; but that left open what mean-

ing the court ascribed to the words that had been lifted without change from the section. "Object" and "doing business" the order did not attempt to define; and, dealing as we are with a criminal prosecution, we must assume that no more was forbidden than the section itself forbade.

It follows from what we have said that the offence was not proved, because the plaintiff did not show that the refusal was not a part of the struggle for power in the Port; as indeed it appears inevitably to have been. We do not say that if it had been shown to have had no connection with that struggle, that is, to have been a mere act of malice not intended to have any effect upon the result, a verdict could not have stood; but the fact was not proved and without that the offence was not proved. Possibly if the cause be tried again it may be proved, but on this record the order must be reversed. There may of course have been criminal incidents accompanying the refusal and the strike; but, if so, their punishment was a matter for the state courts. The losses occasioned to others—the "Association," the trucking companies and their "customers"—by the refusals themselves were, however, incidents for which *per se* the law in its present form does not furnish any relief. Whether it should do so is of course not for us to say.

Order reversed; new trial ordered if the petitioner so desires.

SWAN, *Circuit Judge,* dissenting.

In my opinion the judgments should be affirmed.

JUDGMENT

United States Court of Appeals for the Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 24th day of June one thousand nine hundred and fifty-five.

Present:

Hon. LEARNED HAND,
Hon. THOMAS W. SWAN,
Hon. JEROME N. FRANK,
Circuit Judges.

CHARLES T. DOUDS, REGIONAL DIRECTOR, ETC.,
PLAINTIFF-APPELLEE

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
ET AL., DEFENDANTS-APPELLANTS

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed in accordance with the opinion of this Court.

(S) A. DANIEL FUSARO,
Clerk.

Filed June 24, 1955.

ORDER DENYING REHEARING

United States Court of Appeals
Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 22nd day of July, one thousand nine hundred and fifty-five.

Present:

Hon. LEARNED HAND,
Hon. THOMAS W. SWAN,
Hon. JEROME N. FRANK,
Circuit Judges.

CHARLES T. DOUDS, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD, APPELLEE

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL., APPELLANTS

A petition for a rehearing having been filed herein by counsel for the appellee,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. DANIEL FUSARO,
Clerk.

By RALPH C. CURCIO,
Deputy Clerk.

Filed July 22, 1955.

APPENDIX B

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, 158 (b) (4) (A), are as follows:

Unfair Labor Practices

Sec. 8. * * * (b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other persons; * * *

Prevention of Unfair Labor Practices

Sec. 10. * * * (l) Whenver it is charged that any person has engaged in an unfair labor parctice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such

charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: * * *

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HAROLD B. WILLEY, Cle

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 335.

CHARLES T. DOUDS, Regional Director of the Second Region of the National Labor Relations Board, For and On Behalf of the National Labor Relations Board, Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, and LOCALS 856, 824, 874, 895, 920, 975 and 1258, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT; WILLIAM P. LYNCH, Secretary-Treasurer of Local 791; HAROLD BOWERS, Secretary of Local 824; and WILLIAM ACKALITIS, Business Agent of Local 874.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENTS HAROLD BOWERS AND LOCAL 824 IN OPPOSITION.

SEYMOUR D. LEWIS,
575 Madison Avenue,
New York 22, New York,
Attorney for Respondents Harold Bowers and Local 824.

ROSENMAN GOLDMARK COLIN & KAYE,
NORMAN S. BEIER,
Of Counsel.

Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 335.

CHARLES T. DOUDS, Regional Director of the Second Region of the National Labor Relations Board, For and On Behalf of the National Labor Relations Board, Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, and LOCALS 856, 824, 874, 895, 920, 975 and 1258, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT; WILLIAM P. LYNCH, Secretary-Treasurer of Local 791; HAROLD BOWERS, Secretary of Local 824; and WILLIAM ACKALITIS, Business Agent of Local 874.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENTS HAROLD BOWERS AND LOCAL 824 IN OPPOSITION.

Question Presented.

Whether refusal by a longshoremen's union to work with members of a truck drivers' union in retaliation for the truck drivers having actively aided a rival longshoremen's union constitutes a secondary boycott in violation of Section 8(b)(4)(A) of the National Labor Relations Act, as amended, and therefore violates a restraining order couched in the language of that statute.

Statement.

The background facts of the case, which are determinative of the question presented here, were undisputed and were charged as matters of fact by the trial court in its charge to the jury (A. A. 39-42)*.

The incidents leading to the restraining order started on Pier 32 of the Moore-McCormack line in New York (A. A. 40). A longshoreman named Willie McMahon had terminated his employment with the Moore-McCormack line in October, 1953 but sought re-employment in February, 1954 (I 112). McMahon had been a shop steward of Local 895 of the International Longshoremen's Association, Independent (hereafter "ILA"), but had switched to the newly formed American Federation of Labor (hereafter "AFL") longhoremen's union in October, 1953 (I 100-02). On the threat of the AFL longshoremen's union to picket Pier 32 unless McMahon was re-hired, and upon the threat that Local 807 of the AFL Teamsters Union (hereafter "Local 807") would honor the picket line, the management of Moore-McCormack agreed to re-hire McMahon, and did re-hire him on February 23rd (A. A. 40). Thereupon the ILA members walked off the pier (A. A. 40).

On February 24th and 25th, no one showed up for work at Pier 32 except McMahon (A. A. 40). Therefore, on the morning of February 25th, on the protest of an ILA delegation at the re-hiring of McMahon, Moore-McCormack discharged McMahon and the ILA members went back to work (I 108-13; A. A. 40).

The next morning Local 807 started picketing Pier 32 (A. A. 41). The ILA members worked on Pier 32 on

* References to the record will be in accordance with Petitioner's practice as set forth in footnote 1, page 3 of the Petition. The opinion of the court below will be referred to herein at the pages where it appears in Appendix A of the Petition.

March 1st, 3rd and 4th, but there were no trucks servicing the pier because of the Local 807 picket line (A. A. 41).

In retaliation for this picketing at Pier 32, which had the effect of stopping trucks from servicing Pier 32 where the ILA members were working, the ILA started a movement in sympathy at other piers, refusing to load or unload trucks driven by members of Local 807 (I 177-79; A. A. 41).

When this occurred, Local 807 picketed the piers where there had been refusals to work Local 807 trucks; this had the effect of bringing work to a standstill at piers entirely separate from Pier 32 where the original dispute started (A. A. 41).

The New York Shipping Association, acting for employers on the piers affected by the work stoppages, filed a complaint with the National Labor Relations Board (hereafter the "Board"); this complaint led to the restraining order of March 4, 1954 (A. A. 41).

On petition of the Regional Director of the Board, on March 4th the district court issued a restraining order under Section 8(b)(4)(A) of the National Labor Relations Act, as amended, 29 U. S. C. 158 (b)(4)(A), directed to the ILA, eight named locals, and "their agents, servants, employees, attorneys and all other persons in active concert or participation with them" (A. A. 20-22, 39). This order was issued without formal notice to the respondents, and expired by its own terms on March 9, 1954 (A. A. 21, 39-40). The restraints imposed by the order will be discussed *infra*.

On March 9, 1954 the Regional Director of the Board filed a petition, with supporting affidavits, asking that the district court institute a prosecution of the respondents for civil and criminal contempt (A. A. 27-34, 41-42). By order to show cause signed the same date, the district court initiated the contempt proceedings, appointing the Board's attorneys to act for the court (A. A. 35-38).

Argument.

The restraining order issued *ex parte* by the district court on March 4, 1954 restrained "secondary boycott" conduct in the terms and language of Section 8(b)(4)(A) of the National Labor Relations Act, as amended. It did not restrain the specific conduct concededly engaged in by the ILA longshoremen, i. e. refusal to load or unload trucks driven by Local 807 drivers. Therefore unless the undisputed conduct constituted a secondary boycott, the respondents could not have been in contempt of the court's order.

The restraining order, in the terms of Section 8(b)(4)(A), in brief restrained pier employees from refusing to perform services for their employers where the objects of such refusal were

(1) to force their employers to cease doing business with trucking concerns employing members of Local 807, and

(2) to force customers of trucking concerns employing Local 807 members to cease doing business with said trucking concerns.

The facts brought out by the Board and so charged to the jury by the court indicate quite clearly that the conduct of the ILA members had neither of the above objects.

Local 807 interfered in the dispute on Pier 32, joining with its fellow AFL longshoremen's union in picketing and in refusing to cross the picket line. In reciprocation the ILA members refused to work with Local 807 men on other piers. The dispute was in the nature of a primary dispute between the ILA members and the AFL truckmen continued on other *situ*. Cf. *Schultz Refrigerated Service*, 87 N. L. R. B. 502, 508 (1949). There was absolutely no testimony that the refusal to service Local 807 trucks was

in any way directed at the pier employers, i. e., the New York Shipping Association and other employers, or at the trucking concerns themselves. Nor did the ILA have a labor dispute with the Moore-McCormack line, the primary employer. It was simply a display of ill-feeling between two unions.

As the court below stated, "the refusal to serve the trucks was a reprisal and retaliation against the '807' drivers" (Petition p. 31) and that "the 'object' of the 'Independent's' refusal to serve their trucks was not to advance the union solidarity, but a move against '807' for taking part in a dispute between itself and 'AFL-ILA'" (Petition p. 32).

The Court below properly held that such conduct does not constitute a secondary boycott under Section 8(b)(4)(A) as construed by this Court and lower courts. See cases cited in Petition, pp. 31-32, footnote 3; see also *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 473-74 (1921); *Douds* v. *Sheet Metal Workers International Ass'n*, 101 F. Supp. 273 (E. D. N. Y. 1951); *Elliott* v. *General Drivers, Warehousemen & Helpers, Local Union No. 968*, 123 F. Supp. 125 (S. D. Tex. 1954). Neither the cases nor the legislative history referred to by Petitioner supports a contrary contention.

Petitioner argues that the court below erred since a cessation of business between employers does not have to be the *sole* object of a strike in order to violate Section (8)(b)(4)(A). However, no evidence was introduced, or claim made at the trial, that a cessation of business between employers was *any* object of the ILA members' actions. Petitioner confuses the incidental effects of the actions with the objectives of such actions. As the court below stated, the *consequence* of *any* refusal to work must involve some cessation of business (Petition p. 33), but no showing was made that a cessation of work was an *objective* of the

refusal to work in this case (Petition pp. 33-35). The court below stated: ". . . the plaintiff did not show that the refusal was not a part of the struggle for power in the Port; as indeed it appears inevitably to have been" (Petition p. 36).

However, even if there had been evidence introduced at the trial that an objective of the refusal to serve Local 807 trucks might have been to cause a cessation of business between employers, such evidence would not have sufficed for the reason, among others, that the trial judge committed error by not leaving to the jury's determination the existence or nonexistence of such an objective. As the court below pointed out (Petition p. 34), and Petitioner admits (Petition p. 11), the trial court *left no question to the jury,* except whether the strike was a subterfuge for continuing the refusal to serve Local 807 trucks, and charged that such refusal to serve Local 807 trucks was an illegal secondary boycott which the court order had enjoined (A. A. 41, 46). This error alone would require granting a new trial.

Petitioner asserts further that the restraining order, though it did not restrain the refusal to service Local 807 trucks, should have been so construed because of the surrounding circumstances. The cases cited by Petitioner are not in point. The restraining order here was clear and unambiguous and cannot be extended to cure the Board's errors. If the restraining order had prohibited the specific conduct of refusing to service Local 807 trucks, even though such prohibition would have been jurisdictionally defective under Section (8)(b)(4)(A), the court's order, as stated below, "had to be obeyed, whether it was right or wrong" (Petition p. 35)*. Since the restraining order here was

* This statement should be qualified since the district court could not properly issue an injunction where it patently does not have jurisdiction. See *United States* v. *United Mine Workers,* 330 U. S. 258, 293 (1947). However, the question is not important here.

issued to come within the jurisdiction of Section 8(b)(4)(A), and the *trial court so charged the jury* (A. A. 43-44), it cannot be extended to cover conduct not proscribed by that section.

The court below did consider the recital in the restraining order that there was "reasonable cause to believe" that the respondents had violated Section 8(b)(4)(A),—but it followed the well-settled principle of criminal law which does not permit a loose extension of a specific prohibition (Petition pp. 35-36).

Reasons for Denying the Writ.

1. The decision of the court below is based not only on its correct interpretation of Section 8(b)(4)(A), but on the failure of proof by the Board as to any objective of causing a cessation of business between employers, and on the error in the trial court's charge to the jury. The court below granted Petitioner the right to a new trial if it so desires in order to supply, if possible, the factual deficiencies noted in the opinion below. Under such circumstances, this Court should not rule where such ruling may be unnecessary.

2. Even if it were proved that respondents' refusal to service the Local 807 trucks was intended to cause a cessation of business between the Shipping Association employers and the trucking companies or between those companies and their customers, there is doubt that such refusal would be within the prohibitions of Section 8(b)(4)(A). Prior decisions of this Court and lower courts do not decide this issue. As the court below stated:

> ". . . So in the case at bar, if the respondents' refusal to serve the trucks was merely to cause a cessation of business between the 'Association' and

> the trucking companies or between those companies and their customers, that may have been within the section, though not even that is perfectly certain as will appear . . . .
>
> "We have just said that it is not perfectly certain, even though the 'object' of the refusal had been to break up the business of the 'Association' or the 'customers' with the trucking companies, that the plaintiff would have proved his case. It so happens that in all the three cited decisions the union forced its employer to put a subcontractor off the job; it did not merely refuse to assist the work of the non-union men. We do not say that it should make a difference whether the cessation of business between third parties is brought about without the mediation of one of the parties affected; but we do wish to leave that question undetermined, and that we may for the reasons we have tried to state". (Petition pp. 34-35).

3. The decision of the court below does not have the general importance attributed to it by Petitioner. It pertains only to the very unique situation in this case. While Petitioner mentions the hundreds of charges filed each year under Section 8(b)(4)(A), it cites no case with facts similar to the instant case. Had the Board not delayed for such a long period in deciding the results of the certification proceedings of December, 1953, the unrest on the waterfront would undoubtedly not have erupted in the actions in question. It should be noted that the ILA is presently certified as representative on the waterfront, and there is no justification for Petitioner's statement (Petition p. 22) that "the rivalries which gave rise to the instant proceedings still persist".

4. Respondents raised many substantial questions in the court below, claiming that individually and collectively

they constituted reversible error. The court below reversed on the first issue raised and went no further. If this court should grant the petition for a writ of certiorari and should reverse the determination of the court below, this would not terminate the litigation since the action would have to be remanded to the court below for further consideration of the other issues raised.

We will discuss briefly these other issues in order to demonstrate their substantiality:

a. There was insufficient evidence to establish a *prima facie* case of violation of the restraining order as to respondents Bowers and Local 824.

The restraining order did not name Bowers as a respondent (A. A. 21) and he was not served with the order or given notice of its terms. The requirements of actual notice of an order of the court are strict, especially in a case subjecting a respondent to possible criminal penalties. *United States* v. *Hall,* 198 F. 2d 726 (C. A. 2, 1952), cert. denied 345 U. S. 905; *Kelton* v. *United States,* 294 F. 491 (C. A. 3, 1923), cert. denied 264 U. S. 590; *In re Kwelman,* 31 F. Supp. 23 (E. D. N. Y. 1939). The only substantive evidence adduced at the trial as to Bowers was to the effect that he remained passive and failed to take sufficient action to get the men back to work (I 887-98). This evidence was clearly insufficient. Further, the restraining order, in not naming Bowers as a respondent, was not specific enough to order him to active conduct. *Berry* v. *Midtown Service Corp.,* 104 F. 2d 107 (C. A. 2, 1939), cert. dismissed 308 U. S. 629; *In re Cary,* 10 F. 622 (S. D. N. Y. 1882); cf. *United States* v. *United Mine Workers,* 330 U. S. 258 (1947). In effect, the burden was erroneously put on the respondents on trial to exonerate themselves of the contempt charge. *Western Fruit Growers* v. *Gotfried,* 136 F. 2d 98 (C. A. 9, 1943).

The evidence against respondent Local 824 was substantially entirely vicarious liability through respondent Bowers, and to the extent it was insufficient against Bowers, it was insufficient against the Local. The Board made an abortive attempt to give Local 824 notice of the restraining order by serving a stenographer at the Local's office on March 8, 1954, one day before the end of the March 4th to 9th contempt period in question (II 1381-85). This was clearly insufficient under the restraining order's very terms, or the Federal Rules of Civil Procedure referred to therein (A. A. 22).

b. The trial court improperly admitted considerable testimony, the most prejudicial of which was testimony relating to the post-contempt period and other testimony irrelevant to any respondent on trial.

The contempt period in question was between March 4th and March 9th and the trial court so charged the jury (A. A. 47). However, a very substantial portion of the testimony dealt with events subsequent to March 9th. Such testimony was not admitted under any exception to the general rule such as concealment of a crime, flight, or similar exceptions. The trial court charged the jury that such evidence was received "for the purpose of throwing some light upon the conduct of respondents between March 4th and March 9th" (A. A. 47). However, the post-citation testimony was inflammatory and irrelevant to the charge against respondents. For example, there was considerable testimony by many witnesses as to riots, fights, cursing and picketing in New Jersey and Staten Island and other places by persons in no way connected with or acting on behalf of the respondents on trial (see, e.g., II 1303-37; I 481-501, 663-75, 736-39; II 1235-85). Motion pictures taken after March 9th on the waterfront were shown at

the trial (Pet. Exs. 50-51; VII 2859-79, 2884-86). All of this testimony was designed to and did prejudice respondents. Cf. *Krulewitch* v. *United States*, 336 U. S. 440 (1949); *United States* v. *Moran*, 194 F. 2d 623, 626 (C. A. 2, 1952). The magnitude of its harm cannot be adequately described in these brief lines.

c. The verified petition of the Board for adjudication in civil and criminal contempt was insufficient to charge respondents Bowers and Local 824 with criminal contempt since it was based on hearsay affidavits. Rule 42(b), Federal Rules of Criminal Procedure; cf. *Armstrong* v. *United States*, 18 F. 2d 371, 372 (C. A. 7, 1927), cert. denied 275 U. S. 534.

Further, there was a fatal variance between the contumacious conduct charged and the proof. The petition for adjudication in contempt against respondents Bowers and Local 824 is supported by hearsay affidavits of two longshoremen charging Bowers with actively calling a strike on March 5, 1954. Neither of these witnesses testified at the trial, and no other proof was offered to support this charge. As in any criminal case, a respondent in a criminal contempt case has a right to be informed as to his alleged contumacious activities, and to be tried on the facts charged. See *Gompers* v. *Buck's Stove & Range Co.*, 221 U. S. 418, 444 (1911).

d. The failure of the trial court to grant respondents' motions for severances developed into prejudicial error as the trial unfolded. The long duration (six weeks) of the joint trial and the difficult, if not impossible task of the jury keeping separate in their minds the evidence against each respondent respectively were anticipated (I 33-36). Despite the fact that individual contempt citations were involved herein, with no conspiracy theory alleged or

proved, the trial court denied the motions (I 32, 48). The sole reason for trying the respondents together was for the sake of convenience.

Repeatedly throughout the trial requests were made by respondents' counsel for instructions segregating testimony admissible against only one or some of the respondents (see, e. g., I 241, 287, 370-71, 442-43; VI 2776). The trial court refused to give such instructions during the trial, stating that it would clarify matters "later" (I 442-43). However, the trial court failed to give any instructions on the subject in its charge. That the court and the jury failed to give each respondent the independent judgment required is apparent from the fact that one respondent, Local 975, was not mentioned at all in the Board's case, and yet was convicted. The error here claimed is the combined error first of failing to sever, and then failing to give adequate instructions to the jury during and at the close of the trial.

e. The trial court erred in its charge to the jury regarding the evidence against respondents Bowers and Local 824. The court stated:

> "Now, there has been testimony that George Bowers, a brother of Harold Bowers, did picket duty, and that the recording secretary of Local 824 and two shop stewards did picket duty. That testimony in and of itself standing alone would not warrant a finding of guilt against either Harold Bowers or Local 824. It should be considered along with all the other evidence bearing on the question of the guilt or innocence of these two respondents". (A. A. 53).

This, the only instruction given as to the evidence against either of these two respondents, was clear error. The testimony referred to was completely inadmissible

against Harold Bowers and could not be considered against him since there was no showing of any control by Bowers over the individuals involved, nor any instructions by him to them, nor even that he had knowledge of their activities. Further, as to Bowers and the Local, the instruction was improper since the testimony referred to took place in the post-citation period and was inadmissible *in toto.*

f. The trial record shows a clear pattern of impropriety by counsel for the Board constituting reversible error within the case of *Berger* v. *United States,* 295 U. S. 78 (1935). Most improper was the cross-examination of respondent Bowers.

Bowers testified in his own behalf and, in brief, denied violation of the restraining order and asserted that the rank-and-file members refused to service Local 807 trucks despite his, Bowers', requests to do so (VI 2649 *et seq.*). From the outset of his cross-examination he was viciously attacked.

Bowers testified on direct examination that he had never been convicted of a crime (VI 2649). Yet, the first question asked him on cross-examination was whether he had any "criminal record," a term which the Board's counsel used to include arrests as well as convictions (VI 2682; I 47). Bowers was then asked over objection whether he had been "arrested in 1929 under the name of Frank Donald" and repeatedly whether he had used the "alias" of "Frank Donald" (VI 2682-84). Questioning a defendant about arrests necessarily prejudices the jury and constitutes reversible error. See, e. g., *United States* v. *James,* 208 F. 2d 124 (C. A. 2, 1953); *Packineau* v. *United States,* 202 F. 2d 681 (C. A. 8, 1953). Further, since no question of identity was involved here, questioning as to an "alias" was highly improper. *United States* v. *James,*

supra; United States v. *Grayson,* 166 F. 2d 863, 867, 870-71 (C. A. 2, 1948).

Bowers was also improperly asked about appearances before a state crime commission and a Congressional investigative committee (VI 2684-85), both irrelevant but highly prejudicial. Further, the inference was conveyed to the jury that Bowers improperly retained union funds (VI 2687-88).

Counsel for the Board then attempted to show that Bowers associated with persons with criminal records (VI 2717-22). Such cross-examination to show the kind of persons with whom an accused associates is highly improper. *Templeton* v. *United States,* 151 F. 2d 706 (C. A. 6, 1945); *United States* v. *Chiarella,* 194 F. 2d 903, 911 (C. A. 2, 1950), judgment vacated and remanded for resentencing 341 U. S. 946, judgment modified 214 F. 2d 838 (C. A. 2, 1954).

Where a defendant does not put his general character in issue, specific acts of misconduct not resulting in conviction of a felony or crime of moral turpitude are not the proper subject of cross-examination for impeachment purposes. *United States* v. *Provoo,* 215 F. 2d 531 (C. A. 2, 1954), and cases cited therein, p. 536, footnote 6. Respondent Bowers did not put his character in issue. The improper questioning had no purpose other than to attempt to convict the respondent on inference of unsavory character and associates. Such questioning was not inadvertent,—counsel for the Board stated that he was trying to show the "general character" of the respondent (VI 2687; VII 3186).

The Board's counsel similarly questioned other witnesses (see, e. g., IV 1035-40, 1085-88; V 1645; VI 2368-69, 2382). There are many other instances of improprieties by the Board's counsel (see, e. g., I 658-59; VII 3156). The

pattern of misconduct, and the lack of rebuke or control by the trial court, constituted reversible error,—especially as to respondent Bowers who was tried on prejudice rather than evidence.

5. In the last analysis, what the Board has attempted, and still attempts to do herein, is to punish conduct which it dislikes, but which does not come within its jurisdiction. It has misused the courts, and now asks this Court's aid in its endeavor.

The court below indicated at the conclusion of its opinion (Petition p. 36) that the law in its present form does not furnish the relief sought by the Board for the labor conduct in question in this case. We submit that whether or not it should do so is a matter for the legislature, not the courts, to determine.

Conclusion.

For the reasons stated above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Seymour D. Lewis,
Attorney for Respondents
Harold Bowers and Local 824.

Rosenman Goldmark Colin & Kaye,
Norman S. Beier,
Of Counsel.

September, 1955.

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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 335

CHARLES T. DOUDS, Regional Director of the Second Region of the National Labor Relations Board, For and On Behalf of the National Labor Relations Board,

Petitioner,

—v.—

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, and Locals 856, 824, 874, 895, 920, 975 and 1258, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT; WILLIAM P. LYNCH, Secretary-Treasurer of Local 791; HAROLD BOWERS, Secretary of Local 824; and WILLIAM ACKALITIS, Business Agent of Local 874.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT WILLIAM P. LYNCH IN OPPOSITION

AMBROSE V. McCALL
63 Wall Street
New York, New York

Attorney for Respondent William P. Lynch

GEROME J. LEONE
of Counsel

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT WILLIAM P. LYNCH IN OPPOSITION

Question Presented

Whether the refusal by members of a longshoremen's union to work with members of a teamster's union, the refusal being in retaliation for the latter's active support of a rival longshoremen's union, constitutes an Unfair Labor Practice, *i.e.*, an illegal secondary boycott, and therefore a violation of Section 8(b)(4)(A), Labor Relations Act, as amended, and whether such refusal is violative of a temporary restraining order couched in the language of the statute.

Statement

On the 4th day of March 1954 the Honorable EDWARD J. DIMOCK, United States District Judge for the Southern District of New York, upon the *ex parte* application of the National Labor Relations Board (hereinafter referred to as the petitioner), signed a temporary restraining order, pursuant to the provisions of Section 10(l)* of the National Labor Relations Act, as amended, forbidding certain conduct by the International Longshoremen's Association, Independent (hereinafter referred to as Independent), various of its locals, and their agents (A. A. 20-22).**

The temporary restraining order signed by Judge DIMOCK was the culmination of a series of incidents, which grew out of a dispute at one pier in the Port of New York. The following facts are not now in dispute, and have not been disputed.

The Moore-McCormack Lines, operators of Pier 32, North River, New York City, were approached on February 23, 1954 by a former employee, Willie McMahon. McMahon, who had left Moore-McCormack's employment on October 1953, demanded: firstly, that he be rehired, secondly, that the employer name him shop steward for Pier 32. Supporting this demand were representatives of the International Longshoremen's Association, AFL (hereinafter referred to as AFL) who stated to representatives of the line that if acquiescence was not given to McMahon's demands, they would picket the pier; and representatives of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L. (hereinafter referred to

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* 29 U. S. C. 158(b)(4)(A) and 160(l) are referred to throughout as 8(b)(4)(A) and 10(l) of the Labor Act, as amended.

** A. A. refers to "Appendix to Appellant's [below] Brief." Other references will be App. A or App. B referring to the respective Appendices annexed to the Petition. T. T. will refer to "Typewritten Transcript of Testimony at Trial."

as 807) who stated they would not cross AFL's picket line. This threat achieved the desired result and McMahon was rehired on February (T. T. Vol. I, 103-106).

When this occurred Independent's members did not appear for work at Pier 32 during the next two days. On those days McMahon and representatives of Moore-McCormack went to the hiring halls to secure labor. Failing to secure same, and upon the complaint of Independent, management discharged McMahon. The latter, on the day following, February 26, 1954, picketed Pier 32. The picket line was honored by 807, and no trucks went into Pier 32 (T. T. Vol. I, 106-115).

Members of Independent's locals then commenced a sympathy movement at other piers in the port, and refused to service trucks driven by members of Local 807 (*e.g.*, T. T. Vol. I, 216).

Local 807 then set up its picket lines at those piers where its trucks were denied service, thus keeping out all trucks (*e.g.*, T. T. Vol. I, 380).

The New York Shipping Association, representatives of the employers at the piers, filed complaints with the Board against Independent (Vol. I, 299) and 807 (Vol. I, 283-284, 299).

The Regional Director of the Board, pursuant to the provisions of Section 10(l) of the National Labor Act, as amended, presented an *ex parte* application to Judge Dimock seeking to restrain Independent's conduct. The petition alleged that the Independent's conduct was in violation of Section 8(b)(4)(A) of the National Labor Relations Act, as amended (A. A. 14-19).

The judge granted the application and signed a temporary restraining order at 2:34 P. M. on Thursday, March 4, 1954. This restraining order was directed to the Independent and eight of its locals (A. A. 20-22).

On the following day, Friday, the Port of New York was partially closed and by Monday, March 8, 1954, there was, except for isolated instances, a complete shutdown (*e.g.*, T. T. Vol. I, 536-537).

The respondent Lynch was served with the petition and the order to show cause at about 7 P. M., on March 9, 1954 (T. T. Vol. II, 1388, 1391).

Argument

The temporary restraining order entered by the District Court on March 4, 1954, proscribed certain conduct by the respondents:

> ". . . where objects thereof are 1) to force or require members of New York Shipping Association and other employers to cease doing business with trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and 2) to force or require customers of trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, to cease doing business with said trucking concerns . . ." (A. *A*. 21-22).

This order succinctly describes the conduct that it sought to enjoin. Conduct which Section 8(b)(4)(A) of the Act defines to be an Unfair Labor Practice, *i.e.*, an illegal secondary boycott.

Respondent now urges that since the petition charging the violation of the order embodied the complete terms of the restraining order, it was necessary for the government to establish not only that the respondents had caused a work stoppage, but a stoppage which had for its object, the

object proscribed in the order. And the Court below so held.

The government in its petition argues that this holding was incorrect, basing its argument on a correct, but in this instance an inapplicable, proposition of law. The petitioner states in substance, that just as long as it is established that one of the objects of a strike is the proscribed conduct, then it has proven its case. In support of this proposition it cites cases which were relied upon by the appellants, as well as the Court below. These primarily are cases in which this Court passed upon the meaning of 8(b)(4)(A), the "secondary boycott" provision in 1951. *Labor Board* v. *International Rice Milling Co., Inc.*, 341 U. S. 665 (1951); *Labor Board* v. *Denver Bldg. Council*, 341 U. S. 675 (1951); *Electrical Workers* v. *Labor Board*, 341 U. S. 694 (1951); *Carpenters Union* v. *Labor Board*, 341 U. S. 707 (1951).

However, these cases do not aid the petitioner's position. The Court below did not distinguish the law, either as established by this Court or as decided in other circuits. The Court below merely held that the petitioner failed in its proof and that the trial court had invaded the province of the jury.

The decision below is not in conflict with prevailing law. The ruling is that the petitioner failed in its proof of the existence of a Secondary Boycott. The Court, as petitioner now argues, did not emasculate the "sole object" doctrine. Rather, it held that the petitioners failed to prove that any object of the respondents, intermediate or otherwise, included the proscribed object.

This holding is not only reasonable, but the only logical one in light of what had transpired immediately prior to the issuance of the temporary restraining order, and what had been transpiring for months previous to that. As peti-

tioner concedes (Petition, p. 4) two unions were in conflict. Both sought exclusive representation of the longshoremen. An incident of the rivalry was that the New York Shipping Association suffered and could not conduct its business; the usual effect of strike activity. The effect is undoubtedly not desirable. Nor is the effect newborn. Rather it parallels labor's evolution, as Congress knew when the Labor Act was last amended. Despite this knowledge, Congress, in its attempt to aid the progress of labor and yet curtail certain activity, did not prohibit all conduct in 8(b)(4)(A), but certain conduct only.

This Court has ruled consistently with the reasoning and the obvious intent of Congress, for it has made it clear that before strike action is unlawful it must have a purpose of the character described in 8(b)(4)(A), which is something other than incidental affect, reasoning that every work stoppage has the effect of forcing others to cease doing business with the employer against whom employees have struck. *Auto Workers* v. *Wisconsin Board,* 336 U. S. 245, 253 (1949).

This dispute was between ILA members and the AFL truckmen. There was no testimony that ILA had a dispute with Moore-McCormack Line. As the Court below held, in substance, this was a retaliatory move by one union against another (Petition, p. 32).

The Court below held that not only did petitioner fail in its proof, but that the trial court erred in invading the province of the jury. The trial court charged the existence of a secondary boycott. This was more grievous error than the petitioner's failure of proof as to the existence of an object. The Court's charge (A. A. 40-41) is in direct contravention of the spirit of the Labor Act.

This charge presupposes that the restraining order, obtained by the government under Section 10(l) of the Labor

Act, *ex parte,* without a hearing but on supporting affidavits, instead of being but a vehicle to give to the issuing Court probable cause to believe a situation exists which warrants restraining, is conclusive and unrebuttable proof of the truth of the charges.

That this is not so is apparent from a mere perusal of Section 10(l) which provides in part:

> "That no temporary restraining order shall issue without notice unless . . . * and such temporary restraining order shall be effective *for no longer than five days and will become void at the expiration of such period.* Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: . . ." (Emphasis added.)

It need not be argued at length that action under 10(l) is conclusive of nothing, for this Court has stated that the statute means exactly what it says. It has ruled that:

> ". . . [10(l)] is designed to assist a preliminary investigation of the charges before the filing of a complaint. If the officer . . . has reasonable cause to believe that a charge is true . . . he shall petition an appropriate District Court for injunctive relief, pending the final adjudication of the Board. Such proceeding is independent of that on the merits under §10(a)-(d) . . . As held by the Board, N. L. R. B. at 1203-1204, and the court below, 87 U. S. App. D. C. at 297, 299, 186 F. 2d at 330, 332, the very scheme of the statute

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* Part omitted refers only to what the Board must plead to obtain an *ex parte* order.

accordingly contemplates . . . not [to] foreclosure a proceeding on the merits as is now before us." *Labor Board* v. *Denver Bldg. Council, supra* at 682.

Reasons for Denying the Writ

1. The holding of the Court below is not in conflict with law settled by this Court. Rather the ruling below is consistent with the very cases cited by petitioner. The ruling is based on a failure of material proof at trial and the trial court's erroneous charge to the jury. This Court's intervention is unnecessary, since the Court below granted petitioner a new trial, to remedy the failures and deficiencies if possible.

2. Petitioner attempts to magnify the importance of this case and of the ruling below. The ruling below does not change the administration of the Act, for it does not dwell on that point. The law of injunction is not effected. And lastly, the situation which existed between the rival unions is no more, since one union has been certified, is now; and will continue to be for more than another year, under its present contract, the sole bargaining agent of longshoremen.

3. The question of obedience to an order of the Court was not questioned below. Rather the Court conceded (App. A, p. 35) the order had to be obeyed whether the order was right or wrong. This concession has no bearing whatever on the question of proof of disobedience.

4. The Court below reversed on the first issue raised by appellants. The appellants below raised numerous substantial questions. Those questions have never been decided. Should this Court entertain the instant petition and

even reverse the Court below, the litigation would continue, and the Court below would be required to review the matter again.

The respondent Lynch raised the following questions:

a) Insufficient evidence to establish a *prima facie* case. No proof was introduced that Lynch had notice of the restraining order which it is charged he violated. In contempt cases, the burden of proof of knowledge is exceedingly high on the government. *United States* v. *Hall,* 198 F. 2d 726 (C. A. 2, 1952), cert. denied 345 U. S. 905. Lynch was not named in the original restraining order. Therefore a question arises as to what Lynch had to do to avoid being in contempt of an order that did not name him, and he did not know or understand. It has been ruled that an order of this type is insufficient. *Berry* v. *Midtown Service Corp.,* 104 F. 2d 107 (C. A. 2, 1939), cert. dismissed 308 U. S. 629.

b) Government's attorney committed innumerable improprieties during the course of the trial. At least fourteen instances were cited in Lynch's brief below. (*e.g.,* T. T. Vol. I, 658-9; Vol. IV, 1085-6; Vol. V, 1645-6; 2368-9; 2682-84; Vol. VII, 3150-51). This conduct occurred during the government's case, the unions' case and the individuals' case and while Lynch was on the stand in his own behalf. The conduct complained of was in direct violation of the rulings and admonitions of this Court, e.g., *Viereck* v. *United States,* 318 U. S. 236 (1942).

c) The trial court improperly admitted testimony of the post-contempt period, concerning persons and local unions not on trial; testimony that served to prejudice the respondents and was probative of nothing, even on an incorrect assumption, *e.g.,* that labor unions are not separate from their members. See *United States* v. *White,* 322 U. S. 694, 701-703. The testimony was never connected to the persons on trial. And since this contempt trial was before a jury,

the inadmissable testimony was doubly prejudicial. *Krulewitch* v. *United States,* 336 U. S. 440 (1949).

5. Admittedly, the situation in the Port of New York was difficult at the time of the events portrayed in the undisputed facts herein. It has continued to be extremely difficult, but the remedy is not to be found in this law, and the law should not now be emasculated, as it would be if the ruling below were disturbed. As Judge Hand of the Court below stated:

> "There may of course have been criminal incidents accompanying the refusal and the strike; but, if so, their punishment was a matter for the State courts. The losses occasioned to others—the 'Association,' the trucking companies and their 'customers'—by the refusals themselves were, however, incidents for which per se the law in its present form does not furnish any relief. Whether it should do so is of course not for us to say." (App. A, p. 36.)

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

AMBROSE V. MCCALL
63 Wall Street
New York, New York

Attorney for Respondent
William P. Lynch

GEROME J. LEONE
of Counsel

Office - Supreme Court
FILED
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HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 335.

CHARLES T. DOUDS, Regional Director of the Second Region of the National Labor Relations Board, For and On Behalf of the National Labor Relations Board, Petitioner,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, and LOCALS 856, 824, 874, 895, 920, 975 and 1258, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT; WILLIAM P. LYNCH, Secretary-Treasurer of Local 791; HAROLD BOWERS, Secretary of Local 824; and WILLIAM ACKALITIS, Business Agent of Local 874.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT WILLIAM ACKALITIS

EDWARD V. BRODERICK,
149 Broadway,
New York, New York,
Attorney for Respondent.

JOSEPH H. BRODERICK,
Of Counsel.

THE SORG PRINTING CO., INC., 80 SOUTH ST., NEW YORK 38, N. Y. 105

IN THE

Supreme Court of the United States

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT WILLIAM ACKALITIS

Question Presented.

Whether refusal by a longshoremen's union to work with members of a truck drivers' union in retaliation for the truck drivers having actively aided a rival longshoremen's union constitutes a secondary boycott in violation of Section 8(b)(4)(A) of the National Labor Relations Act, as amended, and therefore violates a restraining order couched in the language of that statute.

Statement.

The background facts of the case, which are determinative of the question presented here, were undisputed and were charged as matters of fact by the trial court in its charge to the jury (A. A. 39-42)*.

The incidents leading to the restraining order started on Pier 32 of the Moore-McCormack line in New York (A. A. 40). A longshoreman named Willie McMahon had terminated his employment with the Moore-McCormack line in October, 1953 but sought re-employment in February, 1954 (I 112). McMahon had been a shop steward of Local 895 of the International Longshoremen's Association, Independent (hereafter "ILA"), but had switched to the newly formed American Federation of Labor (hereafter "AFL") longshoremen's union in October, 1953 (I 100-02). On the threat of the AFL longshoremen's union to picket Pier 32 unless McMahon was re-hired, and upon the threat that Local 807 of the AFL Teamsters Union (hereafter "Local 807") would honor the picket line, the management of Moore-McCormack agreed to re-hire McMahon, and did re-hire him on February 23rd (A. A. 40). Thereupon the ILA members walked off the pier (A. A. 40).

On February 24th and 25th, no one showed up for work at Pier 32 except McMahon (A. A. 40). Therefore, on the morning of February 25th, on the protest of an ILA delegation at the re-hiring of McMahon, Moore-McCormack discharged McMahon and the ILA members went back to work (I 108-13; A. A. 40).

The next morning Local 807 started picketing Pier 32 (A. A. 41). The ILA members worked on Pier 32 on

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* References to the record will be in accordance with Petitioner's practice as set forth in footnote 1, page 3 of the Petition. The opinion of the court below will be referred to herein at the pages where it appears in Appendix A of the Petition.

March 1st, 3rd and 4th, but there were no trucks servicing the pier because of the Local 807 picket line (A. A. 41).

In retaliation for this picketing at Pier 32, which had the effect of stopping trucks from servicing Pier 32 where the ILA members were working, the ILA started a movement in sympathy at other piers, refusing to load or unload trucks driven by members of Local 807 (I 177-79; A. A. 41).

When this occurred, Local 807 picketed the piers where there had been refusals to work Local 807 trucks; this had the effect of bringing work to a standstill at piers entirely separate from Pier 32 where the original dispute started (A. A. 41).

The New York Shipping Association, acting for employers on the piers affected by the work stoppages, filed a complaint with the National Labor Relations Board (hereafter the "Board"); this complaint led to the restraining order of March 4, 1954 (A. A. 41).

On petition of the Regional Director of the Board, on March 4th the district court issued a restraining order under Section 8(b)(4)(A) of the National Labor Relations Act, as amended, 29 U. S. C. 158 (b)(4)(A), directed to the ILA, eight named locals, and "their agents, servants, employees, attorneys and all other persons in active concert or participation with them" (A. A. 20-22, 39). This order was issued without formal notice to the respondents, and expired by its own terms on March 9, 1954 (A. A. 21, 39-40). The restraints imposed by the order will be discussed *infra*.

On March 9, 1954 the Regional Director of the Board filed a petition, with supporting affidavits, asking that the district court institute a prosecution of the respondents for civil and criminal contempt (A. A. 27-34, 41-42). By order to show cause signed the same date, the district court initiated the contempt proceedings, appointing the Board's attorneys to act for the court (A. A. 35-38).

ARGUMENT.

The respondent William Ackalitis, adopts the argument and reasons for denying the Writ as set forth in the brief furnished the Court in behalf of respondent, Bowers. The respondent, Ackalitis, believes that Mr. Norman S. Beier, of Roseman, Goldmark, Colin & Kaye, has set forth the reasons for denying the Writ with great clarity, erudition and unanswerable legal reasoning. Therefore, the writer believes that it would neither be helpful to the Court or to the cause of Mr. Ackalitis, to repeat the arguments against granting the Writ.

CONCLUSION.

For the reasons stated above, it is respectfully submitted that the petition for a Writ of Certiorari be denied.

EDWARD V. BRODERICK,
Attorney for respondent, William Ackalitis.

JOSEPH H. BRODERICK,
Of Counsel.

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HAROLD B. WILLEY, Clerk

IN THE

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Petitioner,

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INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, and LOCALS 856, 874, 895, 920, 975 and 1258, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, WILLIAM P. LYNCH, Secretary-Treasurer of Local 791; HAROLD BOWERS, Secretary of Local 824; and WILLIAM ACKALITIS, Business Agent of Local 874,

Respondents.

BRIEF OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, AND LOCALS 856, 874, 895, 920, 975 AND 1258 IN OPPOSITION TO PETITION FOR CERTIORARI

VINE H. SMITH,
Attorney for International Longshoremen's Association, Independent, and Locals 856, 874, 895, 920, 975 and 1258.

JOHN T. SULLIVAN,
ARTHUR J. CILENTO,
of Counsel.

APPELLATE PRESS CORP., 114 WORTH STREET, N. Y., CORTLANDT 7-7627

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BRIEF OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, AND LOCALS 856, 874, 895, 920, 975 AND 1258 IN OPPOSITION TO PETITION FOR CERTIORARI

In this brief Arabic numerals in parenthesis, unless otherwise indicated, refer to pages of Appellants' Appendix. Such Arabic numerals in parenthesis preceded by Roman numerals refer to the volume (Roman) and page (Arabic) of the typewritten minutes of the testimony.

In referring to respondent parties and others, when the full name is not used, the shortened forms mentioned in the opinion of the Court of Appeals (Petition, Appendix A, p. 28) will be employed. Those condensations are as follows: International Longshoremen's Association, Inde-

pendent, is referred to as the "Independent", Truckdrivers Local 807, as "807", New York Shipping Association as the "Association", the American Federation of Labor, as "AFL", and the Longshoremen's Association chartered by AFL as a contender for union representation of longshoremen at the Port of New York (and elsewhere on the eastern seaboard) as "AFL-ILA".

Opinion Below

The opinion of the United States Court of Appeals for the Second Circuit, of which the petitioner herein seeks a review, appears as Appendix "A" to the petition (Petition, page 26), and has now been reported, *viz.*—

> *Charles T. Douds, Regional Director, Petitioner,* v. *International Longshoremen's Association, Independent, et al., Respondents,* 224 F. 2d 455 (Advance Sheet dated Sept. 19, 1955).

Question Presented

The sole question involved herein is as to whether the action of International Longshoremen's Association, Independent, and its Locals above enumerated (or any of those groups) in refusing to handle merchandise trucked by members of Teamsters Union, Local 807, under the circumstances disclosed by the record at bar, constituted a violation of the temporary restraining direction contained in the order to show cause issued by the United States District Court for the Southern District of New York on March 4, 1954. A copy of that order is included in Appellants' Appendix (20-2).

The order to show cause was made upon the Regional Director's petition approving and adopting a charge that respondents were violating and would continue to violate

Section 8(b), subsection (4)(A) of the National Labor Relations Act (15). The order, therefore, in terms which were express but not specific, conditioned its temporary restraining provision upon a determination as to the object of the strike or work stoppage ascribed by the Director to the respondents. This defining provision restrained these respondents until March 9, 1954 at 5:00 p. m. from:

> "Engaging in, or, by orders, directions, instructions, appeals, or other means, or by permitting any such to remain in existence or effect, inducing or encouraging the employees of members of New York Shipping Association and of other employers to engage in, strikes or concerted refusals in the course of their employment, to use, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform services for their employers, where objects thereof are (1) to force or require members of New York Shipping Association and other employers to cease doing business with trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and (2) to force or require customers of trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, to cease doing business with said trucking concerns; * * *" (21-22).

The question presented, therefore, may be stated more precisely as the inquiry as to whether the facts sustain the Director's claim that the objects of the respondents fall within the limits of the order and of the statutory provision above quoted.

Statement

After a trial lasting six weeks, the District Court (Judge Harold P. Burke) in an extended charge (38-70) submitted to the jury the question whether the conduct of the defendants constituted a violation of the *ex parte* restraining order. The jury rendered a verdict in favor of the petitioner. From the judgment entered upon that verdict the respondents appealed to the United States Court of Appeals for the Second Circuit. That Court held, Judge Learned Hand writing, that the acts ascribed by the testimony to the respondents and the objects motivating those acts did not fall within the condemnation of the restraining order or of the statute [29 U. S. C. 151, 158 (b)(4)(A)—see Petition, Appendix B, p. 39] upon which the order itself was based. Circuit Judge Frank concurred with Judge Hand. Circuit Judge Swan dissented without opinion.

The import of this holding becomes clear upon an examination of the facts disclosed by the record—and the further facts which the Court of Appeals assumes for the purposes of its review.

Facts

The material facts have been stated in a condensed but complete summary in the opinion of the Court of Appeals and have been set forth in more detail and with differing emphasis in the petition and in the briefs of other respondents. We desire, however, to call attention to certain details, most of which indeed are noted but not stressed in the opinion of the Court of Appeals.

Prior to and in 1953 Independent was a longshoremen's labor union which included practically all the longshoremen employed in the Port of New York and was the bar-

gaining agent for longshoremen recognized by the New York Shipping Association, which was the representative of numerous steamship operators, stevedoring companies and others employing longshoremen.

Until 1953 the Independent was an affiliate of AFL. In the fall of that year, as the result of protracted disputes and tensions, Independent was expelled by AFL. Independent, however, continued to act as the bargaining agent for the longshoremen who were members of its various locals. AFL chartered a new union, AFL-ILA, which promptly began an active proselyting campaign to induce members of Independent and its locals to switch to AFL-ILA.

Independent, failing to agree upon a new contract with the Association, called a strike on October 1, 1953, as a result of which an 80 day injunction under the Labor Management Relations Act was obtained by the Attorney General of the United States. In obedience to this injunction, Independent ordered its members back to work and they went back.

In the meantime, AFL-ILA, the new union sponsored by AFL after its expulsion of Independent, filed with the Labor Board a petition for certification as the bargaining representative of the longshoremen in this port. Pursuant to that petition an election was held in December, 1953, at which the returns showed a majority for Independent. The Labor Board, however, on objections to the election urged by AFL-ILA, withheld its certificate. [A second election was held later at which Independent again prevailed with the result that Independent eventually received the Labor Board's certificate as the bargaining representative of the longshoremen in this Port.] On March 4, 1954, prior to the conclusion of the hearings on the objections made by AFL-ILA to the election of December, 1953, the District Court granted the order to show

cause with the *ex parte* preliminary restraining direction which the petitioner claims to have been violated by Independent and its locals.

The events leading to the proceedings initiated by that order to show cause began, as the trial court charged (40-41), not with any action of Independent but with the effort of one Willie McMahon to take over Pier 32, North River, on behalf of AFL-ILA. McMahon had been a member of the local of Independent working at that Pier and had been employed by the Moore-McCormack Line. He had, indeed, been shop steward of that local. Following the expulsion of Independent from AFL and the attempt of AFL to supersede Independent by AFL-ILA, McMahon had resigned and joined AFL-ILA. Later, after the election of December, 1953, at which AFL-ILA failed to get a certificate, McMahon was re-employed by the Moore-McCormack Line on Pier 32.

The incidents of his reemployment afford details which are significant as to the object of the actions taken both by the respondent labor union and locals and by the groups which were contending with the respondent for recognition as the bargaining agent of the longshoremen at this Port. These incidents are hardly suggested by the statement in the petition (5) that—

> "About 4 months later, however, on February 23, 1954, AFL-ILA prevailed upon Moore-Mac to rehire McMahon to work on Pier 32 (I-105-106)."

This statement will be more informing and more consonant to the actual record if we note the manner in which AFL-ILA did "prevail" as above stated. It appears in the record without dispute and was so charged (40) that the representatives of 807 informed Moore-McCormack that unless McMahon was rehired the pier would be picketed. At the same time representatives of Local 807 in-

formed Moore-McCormack that the picket line thus created would be honored by that local and that truck drivers of that local would not cross such picket line (1-103-106). This "persuasion" was employed although the rehiring of McMahon was unfair because it ignored the seniority rights of members of Independent.

That rehiring, together with the threats that induced it, involved, of course, a further attack upon the position of Independent because McMahon was no longer a member of Independent but of a different and hostile union. Accordingly, when McMahon was reemployed at Pier 32, the members of Independent working at that pier refused to work with him. Thereupon the Moore-McCormack Lines, McMahon's employer, terminated his rehiring and discharged him. The members of Independent then returned to work but McMahon picketed the pier. Truck drivers belonging to Teamsters Union Local 807 made good their previous threat by refusing to cross the picket line established by McMahon's solo picketing. This action of 807 effectually stopped work on Pier 32, for drivers of all trucks feared and refused to cross the picket line of 807. This was the beginning of the "paralysis" of commerce at this port which became the subject of the petitioner's complaint. Following this action of the Teamsters Local 807, Independent did not strike but refused to handle at other piers merchandise for trucks driven by members of 807.

The charge of the trial court, after setting forth these facts, continued:

> "When this occurred, the AFL Teamsters picketed the piers where there had been refusal to work 807 trucks. *This* had the effect of bringing work to a standstill at locations and piers entirely separate and apart from Pier 32 * * *" (41, emphasis supplied).

It is to be observed, therefore, that the work stoppage underlying the complaint against Independent actually began with the refusal of members of a different union, 807, to transport merchandise to and from Pier 32 and was completed by the refusal of members of the same union to transport merchandise to and from any of the other piers at this port.

The conduct upon which the trial court permitted the jury to base its verdict of criminal contempt was simply the retaliatory partial withdrawal from work on the part of Independent directly provoked by the insistence of 807 that AFL-ILA must be treated as the bargaining agent for the longshoremen at the Port of New York.

It is obvious that here there was no secondary boycott because there was no dispute between any employer and its employees. The dispute was solely between two unions, each contending for recognition as the bargaining agent for longshoremen in this port. The various moves of AFL-ILA on the one hand and the counter moves of Independent on the other had as their sole object in every instance the weakening of the position of the opposing union or the avoidance of being injured by the hostile action of the opponent.

Upon the record as above summarized, these respondents (Independent and its Locals) contend that the petition for certiorari should be denied because:

1. Upon the facts of record the acts ascribed to Independent and its Locals and in particular the objects of those acts did not violate the direction of the District Court's order nor the provisions of the National Labor Relations Act.

2. The record at bar does not present a case of general consequence or otherwise appropriate to invoke the corrective action of this Court.

POINT I

Upon the facts of record the acts ascribed to Independent and its Locals and in particular the objects of those acts did not violate the direction of the District Court's order nor the provisions of the National Labor Relations Act.

The *ex parte* order which the respondents are claimed to have violated forbade them to strike or engage in concerted refusals to work, etc. where their object in so doing was to force members of the Association to stop doing business with members of Local 807 and other specified AFL affiliates, and to force customers of trucking concerns employing members of 807 and other AFL affiliates to cease doing business with such trucking concerns (21-2). Unless the actions of the respondents were motivated by one or the other of these objects, they were not forbidden either by the order or by the statute from which the order derives authority.

As the opinion of the Court of Appeals points out (Petition, Appendix A, p. 30), there is no proof that the retaliatory refusal of Independent and its Locals to handle merchandise from the trucks of 807 actually did result in any cessation of business between the employers of 807 drivers and those drivers or 807, their Local. But even if such cessation in fact occurred there would be no violation either of the restraining order or of the National Labor Relations Act unless the objects of the respondents were those described in the order.

The opinion of the Court of Appeals observed that any strike or any cessation of work or any refusal to handle goods in combination with other workers must inevitably result in some cessation or dimunition of business. If, however, the statute had contemplated a ban to cover all

cases where any such cessation or dimunition occurred, it would have been quite unnecessary to use the qualifying restrictive phrasing which is employed in the Act and paraphrased in the restraining order. [Such a sweeping provision would actually have forbidden any right to strike at all.]

Applying these limitations to the provisions of the restraining order and the underlying statute, it is obvious that the purpose and motivation of the respondents, even upon the view most favorable to the petitioner, was something basically and manifestly different from the conduct which is forbidden by the restraining direction and by the statute.

Independent and AFL-ILA were locked in an embittered contest for certification as the bargaining agent of longshoremen at this Port. 807, an AFL affiliate, actively and by work stoppage undertook to aid its AFL co-affiliate. In the course of this conflict McMahon picketed Pier 32, North River. 807 directed its teamsters to refuse, and they did refuse, to cross that picket line or transport any merchandise to or from that pier. This effectually closed up Pier 32. (A repetition of this proceeding at other piers would, of course, have brought about a like tie-up of general proportions.) Thereupon, members of Independent refused to handle merchandise from trucks of 807, which, in turn, picketed the piers of the Port generally (41).

It does not appear that the members of Independent also picketed the piers. Because of the 807 picketing, their drivers and drivers of other trucks, as well, refused to cross the picket line and practically no merchandise was reaching the piers. Independent and its locals did not picket. Its members cannot well be said even to have quit work. They simply did not work because there was no merchandise on the piers requiring the labors of long-

shoremen. This is not inference, it is the express import of the charge (41).

The actual cessation of business on the piers, according to the charge itself, throughout the entire waterfront of the Port was caused by the picketing activity of 807, just as the beginning of the stoppage of commerce at Pier 32 was caused by the McMahon picketing of that pier (41).

But, irrespective of who actually caused whatever cessation of business resulted from this contest between competing labor unions, it is manifest that the object of Independent was not either of those described in the restraining order. This different motivation was stated by Judge Hand in the opinion of the Court of Appeals as follows:

> "In the case at bar it is true that the '807' drivers were in a different craft from the longshoremen; but the 'object' of the 'Independent's' refusal to serve their trucks was not to advance the union solidarity, but a move against '807' for taking part in the dispute between itself and 'AFL-ILA.' If this was within the statute *it means that a union may not advance its own cause in a dispute with another to gain representation, if the step it takes causes a cessation of business between its employer and a third person, or between two third persons.* It is one thing to say that such interference is unlawful when its 'object' is the promotion of unionism in general, and a very different thing to forbid such a sanction as part of the contest for control" (Petition, Appendix A, pp. 32-33).

Judge Hand's analysis and his conclusion as to the actions and objects of Independent and its Locals is supported not only by the natural meaning of the language of the Act and the restraining provision of the order but by well considered judicial decisions.

It should not be necessary, we believe, even if it were possible, to enter upon an exhaustive examination of the apposite authorities. The language of the statute itself and the recent decisions of this Court cited by the Court of Appeals (p. 31) are sufficient, it is submitted, to sustain the judgment of the Court of Appeals. Those decisions are:

National Labor Relations Board v. *International Rice Milling Co.,* 341 U. S. 665;

National Labor Relations Board v. *Denver Building & Construction Trades Council,* 341 U. S. 675;

International Brotherhood of Electrical Workers v. *National Labor Relations Board,* 341 U. S. 694;

Local 74 v. *National Labor Relations Board,* 341 U. S. 707.

In the proceeding against International Rice Milling Co., *supra,* it was contended that the work stoppage there involved was a violation of the same statutory provisions which are invoked by the petitioner in the case at bar. This Court held in its unanimous opinion, Mr. Justice Burton writing, that the actions of the labor union did not fall within the condemnation of the statute.

In the case of *National Labor Relations Board* v. *Denver Building & Construction Trades Council, supra,* there was a difference of opinion among the Justices, but the holding of the Court was that the prohibitory clauses of the statute had been violated.

Although all of these cases involve the construction and application of the statutory provisions with which we are concerned in the case at bar, none of them concerns situations closely analogous to that which is presented here. The language of the opinions, however, does indicate that

conduct such as is shown in the case at bar falls well outside of the scope of the restraining provisions of the National Labor Relations Act and of the order of March 4, 1953.

In *National Labor Relations Board* v. *International Rice Milling Co., supra,* as in the case at bar, there was a contest between unions. In that case each union was seeking recognition as the collective bargaining representative of the operatives employed at a certain mill. The case was determined in favor of the union on the ground that the acts of the union pickets constituting the basis of the complaint had not been concerted. Some of the expressions in the Court's opinion, however, and some of its references to the legislative history of the statute concerned in that case and in this, tend strongly to support the position of the Court of Appeals herein that the acts of the respondents cannot reasonably be brought within the scope of those legislative provisions nor of the restraining direction in the Court's order which was intended to implement those provisions. Thus this Court said (341 U. S. 670-1):

> "While each case must be considered in the light of its surrounding circumstances, yet the applicable proscriptions of § 8 (b)(4) are expressly limited to the inducement or encouragement of concerted conduct by the employees of the neutral employer."

In footnote No. 8, 341 U. S. 673-4, appears the following:

> "* * * The primary strike for recognition (without a Board certification) is not proscribed."

Again, as stated in the same footnote, Senator Taft, floor manager for the bill in the Senate, said:

> "* * * All this provision of the bill [Sec. 8 (b)(4)] does is to reverse the effect of the law as to secondary boycotts."

As Judge Hand noted (Petition, Appendix A, p. 32) in his opinion in the case at bar, the essential and characteristic conditions of a secondary boycott are not only not shown but are negatived by the admitted facts in the instant case.

That actions such as those ascribed here to the respondents are not forbidden by the provisions of law upon which the petitioner relies nor by the provisions of the District Court's order herein, is further indicated by the following decisions:

Duplex Printing Press Co. v. *Deering,* 254 U. S. 443, 473-474 (1921);

Elliott v. *General Drivers, Warehousemen & Helpers, Local Union 968,* 123 F. Supp. 125 (S. D. Texas 1954);

Auto Workers v. *Wisconsin Board,* 336 U. S. 245, 253 (1949);

Schultz Refrigerated Service, 87 N. L. R. B. 502 (1949);

Douds v. *Sheet Metal Workers International Association Local Union 28,* 101 F. Supp. 273 (E. D. N. Y. 1951);

Douds v. *Metropolitan Federation, A. E. C. & T.* (1948, D. C. N. Y.), 75 F. Supp. 672.

On page 17 of the petition the petitioner has directed the court's attention to six cases offered by them in substantiation of the version of Section 8(b)(4)(A) which it has espoused herein. Not one of these precedents presents any factual analogy to the case at bar or supplies any reason for rejecting the conclusion reached herein by the Court of Appeals.

The frailty of the reasons upon which petitioner relies is likewise revealed by the extravagance of his claims respecting the scope of the Act. Petitioner argues (Petition, p. 20):

"* * * to achieve this objective Congress barred all strike action directed against, *or which has the effect of injuring,* the business of third persons not involved in the basic disagreement giving rise to the conflict". (emphasis supplied)

The import expressed in the italicized portion of this quotation finds no support whatever in the language of the statute. On the contrary, the act carefully confines its proscription to cases in which the object of the strikers was to injure third parties in the way defined in the words of the act. This was no inadvertence.

We have already quoted the language of Senator Taft to which this Court called attention in deciding the Denver case and the other cases reported in 341 U. S. The statements of Senator Taft show that what was intended was precisely what was expressed in the language of the act, *viz.*: the outlawing of strikes having the limited objects specifically stated in the act.

To ignore this limitation and read into the act a ban upon all strikes having "the effect of injuring the business of third persons" would extend its impact far beyond either the language or the purpose of the legislature. It would indeed bar all strikes.

But even if petitioner's "construction" of this statute be adopted the proof still fails to disclose any disobedience of the order of March 4, 1953. Judge Dimock, who signed that order, did not interpret the act as importing the all embracing scope ascribed to it by petitioner. Accordingly the judge forbade only strikes having the objects defined in the order.

As we have pointed out, the respondents, as the result of the picketing by 807 were left without work to do, but even if it be assumed that their conduct constituted a strike, their objects did not and could not have included those defined in the order.

POINT II

The facts out of which this proceeding arose are entirely unique and the case possesses no general significance whatsoever calling for the intervention of the United States Supreme Court.

It is, of course, well settled that the jurisdiction of this Court to issue the writ of certiorari does not contemplate a routine exercise of reviewing authority, but is to be invoked only when special circumstances require decision by the Court of last resort. United States Supreme Court Rule 19(1); *Hamilton Shoe Co.* v. *Wolf Brothers,* 240 U. S. 251; *Brown* v. *Allen,* 344 U. S. 443, 491; *In re Woods,* 143 U. S. 202.

In *Hamilton Shoe Co.* v. *Wolf Brothers supra,* this Court said, Mr. Justice Pitney writing (240 U. S. at p. 258):

> "As has been many times declared, this is a jurisdiction to be exercised sparingly, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision."

The pronouncements of this Court are uniformly to like effect.

The facts and circumstances at bar do not bring the instant case within the scope of the principles governing the exercise of this extraordinary jurisdiction as above outlined. Even a casual perusal of the record of this prosecution will serve to demonstrate that the officials of the National Labor Relations Board had as much to do with bringing about the unhappy incidents which precipitated the strike in the Port of New York from February 27, 1954 to April 3, 1954 as the respondents herein. The sketchy outline of the facts set forth in the petition herein serves to spotlight the "unique" nature of this case right from its very outset. It is "unique" principally because the National Labor Relations Board was continually striving

by every means at its command to encompass the downfall of the I.L.A.—Independent in favor of its A.F. of L. rival. On pages 4 and 5 of the petition herein the following appears:

> "On October 8, 1953, AFL-ILA filed a petition with the National Labor Relations Board for certification as the exclusive bargaining representative of the longshoremen employed in the Port of New York (III-131-132). On December 23 and 24, 1953, the Board conducted an election to determine whether the old ILA or the new AFL-ILA, or neither, was the majority representative of these employees (Pet. Ex. 41). The election did not result in the certification of a representative because objections to the election were filed by the AFL-ILA, alleging, inter alia, that there had been violence and intimidation in connection with the polling in Brooklyn (III-151-154). Hearing on these objections was ordered by the Board and was in progress (III-152) when the following events occurred."

Nowhere can there be found any reference to the fact that the I.L.A.-Independent won the election, but was deprived of the victory through the pretext of violence and intimidation, nor is it disclosed that a second election supervised by the Board also resulted in victory for Independent. Neither is any indication given as to what the disposition of the alleged violence and intimidation charges would have been if AFL-ILA had emerged victorious in the first election. Apparently no consideration was given to the advisability of seeking an injunction against McMahon and the Teamsters when the demands were made by both of them for the re-employment of McMahon in February of 1954, to forestall the chaotic situation which finally came to pass, and when the National Labor Relations Board did secure an injunction, it was directed only against Indpendent and not against either the A.F. of L. Teamsters or AFL-ILA,

although McMahon, at Pier 32, with the approval and encouragement of Local 807, had started the picketing and precipitated the overall work stoppage which commenced when 807 set up picket lines at practically every pier throughout the port.

If the National Labor Relations Board had certified the first election or even if it had included McMahon and the Teamsters in its injunction application, the events of the ensuing weeks would have been forestalled and avoided. It is not to be anticipated that the National Labor Relations Board will indulge in any further manoeuvers of this stamp and it is therefore extremely unlikely that a case based on any such facts as these will ever again reach the courts. Nevertheless, the Court's attention is invited to the specious and absurd arguments advanced by petitioner in support of its application for certiorari on pages 20, 21, and 22. Petitioner there states that approximately 300 charges were filed with the Board in the "fiscal" year ending in June 1955, alleging violation of Sec. 8(b)(4)(a). It seems that 60 were deemed by the Board to have merit, so as to require invocation of the mandatory provisions of Sec. 10(1) for interlocutory injunctive relief, and ⅓ arose in the 2nd Circuit. Nowhere is there any scintilla of a flimsy claim made, except possibly by some form of indirection, that the facts in even one of these cases have anything to do with the instant case. From this omission it is of course obvious that no relevance exists.

The next non sequitur appears at the bottom of page 21, where it is stated:

> "Experience demonstrates that frequently the denial of injunctive relief under Section 10(1) marks the end of the unfair labor practice proceedings generally."

It would seem to be a rather elementary proposition that defeat for one or the other of the parties is a some-

what frequent way of achieving the very desirable result of concluding litigation.

Then the petitioner goes on to state with mysterious generalities, which are wholly incompetent and immaterial to the issues of this proceeding, as follows:

> "In such instances, the employers are often inclined to yield to such 'secondary' pressures, 'make their peace' with the union, and request the Board to permit withdrawal of the charges initiating the proceedings."

Perhaps it is the intention of the Board to apply the implications of this kind of unsubstantiated opprobrium to Independent. Its significance is indeed difficult to comprehend in the circumstances.

The final reason given in this petition (on page 22) for the granting of the application would be laughable if it did not amount to a surprising lack of candor with this honorable Court on the part of the National Labor Relations Board. The Board knows very well that AFL-ILA is dormant and dead, to all intents and purposes, in New York. Independent has a union shop contract in the Port of New York, and only its members are employed under its contract with the Association. There is certainly nothing of any "retaliatory" nature which Independent can carry on against the corpse of AFL-ILA. The only real danger stems from the apparent desire on the part of the Board to breathe life back into the AFL-ILA cadaver. That desire hardly constitutes an adequate basis for the issuance of a writ of certiorari.

CONCLUSION

For the reasons above stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

VINE H. SMITH,
Attorney for International Longshoremen's Association, Independent, and Locals 856, 874, 895, 920, 975 and 1258.

JOHN T. SULLIVAN,
ARTHUR J. CILENTO,
of Counsel.